16-188

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1067

EDWARD SCHWED, ET AL., APPELLANTS,

AGAINST

WILLIAM SMITH, ET AL., RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

H. N. FAREY & CO. PRS. JOURNAL BUILDING KANSAS CITY.

Filed October 13 1882.

SUPREME COURT OF THE UNITED STATES.

No......

EDWARD SCHWED, ET AL., APPELLANTS,

AGAINST

WILLIAM SMITH, ET AL., RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

INDEX.

Transcript from State Court 1
Plaintiffs' Appearance 18
Motion for New Injunction Bond 18
Motion to Dissolve Injunction 19
Order Denying Motions 19
Order to Produce Books 21
Application to Produce Books 22
Petition for Leave to File Supplemental Bill 25
Order to File Supplemental Bill 26
Supplemental Bill 27
Demurrer to Supplemental Bill 30
Demurrer and Answer of Defendant Heller 31
Answer of Defendants Schwed & Newhouse 35
Replication to Amended Answer 39
Order Overruling Demurrer 39
Answer to Supplemental Bill 39
Replication to Answer to Supplemental Bill 41
Decree 42
Testimony Produced at Hearing 43
Application and Order to Take up Original Exhibits "14," "15," and "18" 276
Decision Overruling Motion to Dissolve Injunction 276
Decision Setting Aside the Judgment in the State Court 279
Appeal Bond, Approval of the same, and Appeal Allowed 285
Clerk's Certificate 287

UNITED STATES OF AMERICA, SCT.

EDWARD SCHWED, *et al.*, *Appellants*,

AGAINST

WILLIAM SMITH, *et al Rspondents.*

Pleas and proceedings had before the Circuit Court of the United States, for the Western Division of the Western District of Missouri, in the case of William Smith, John Smith and O. C. Lenz, co-partners doing business under the firm name and style of William Smith & Company, and William C. Greene, B. W. Greene and George D. Briggs, co-partners doing business under the firm name and style of William C. Greene & Company, complainants, against Edward Schwed and Simon H. Newhouse, co-partners doing business under the firm name and style of Schwed & Newhouse, and H. Heller, and O. P. W. Bailey, sheriff of said County of Jackson, defendants. In Chancery.

Be it remembered that heretofore, to-wit: In vacation of the Circuit Court of the United States aforesaid, at Kansas City, in said Western Division of the Western District of Missouri, to-wit: On Saturday, October 9th, A. D. 1880, the following entry was made upon the order book of said court, to-wit:

WILLIAM SMITH, *et al.*,
against
EDWARD SCHWED, *et al*,

This day come the plaintiffs and file appearance and transcript herein.

The said transcript of record is in words and figures as follows, to-wit:

STATE OF MISSOURI, }
COUNTY OF JACKSON, } ss.

Be it remembered, that at a regular term of the Circuit Court of Jackson County, State of Missouri, begun and held at the court house of said county at Kansas City on the second Monday in October, A. D. 1879, it being the 13th day of said month, were present Hon. S. H. Woodson, Judge of the Twenty-fourth Judicial Circuit of the State of Missouri, O. P. W. Bailey, Sheriff of Jackson County, State of Missouri, and Wallace Laws,

Clerk of the Circuit Court of Jackson County, State of Missouri; and on Saturday, February 14th, A. D. 1880, it being the 83d day of said October term 1879 of said court, officers present as aforesaid, the following proceedings among others were had, to-wit:

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, Co-partners doing business under the firm name and style of William Smith & Company, and
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, Co-partners doing business under the firm name and style of William C. Greene & Company,
against
EDWARD SCHWED and SIMON H. NEWHOUSE, Co-partners doing business under the firm name and style of Schwed & Newhouse, and
H. HELLER, and O. P. W. BAILEY, Sheriff of said County of Jackson.
} 4518.

Now at this day come said plaintiffs, by their attorneys, and file herein their petition, affidavit and bond for injunction, and upon their application it is ordered by court that the sheriff of Jackson County be and is hereby ordered and directed to adjourn the sale of property levied upon under the execution in the case of H. Heller, plaintiff, against Edward Schwed and Simon H. Newhouse, partners by the name of Schwed & Newhouse, defendants, from day to day, until Wednesday, February 18th, A. D. 1880, 11 o'clock A. M.

Which said petition and affidavit and the filing thereon are in words and figures as follows; to-wit:

In the Circuit Court of Jackson County, Missouri, at Kansas City, at the April Term, A. D. 1880.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, Co-partners doing business under the firm name and style of William Smith & Company, and
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, Co-partners, doing business under the firm name and style of William C. Greene & Company,
The Plaintiffs,
against
EDWARD SCHWED and SIMON H. NEWHOUSE, Co-partners doing business under the firm name and style of Schwed & Newhouse, and
H. HELLER, and O. P. W. BAILEY, Sheriff of said County of Jackson,
The Defendants.

PETITION.

The above named plaintiffs, William Smith, John Smith and O. C. Lenz, complaining of the above named defendants for cause of action here-

in allege, and the plaintiffs, William C. Greene, B. W. Greene and George D. Briggs allege:

First. That at the time hereinafter mentioned, the plaintiffs, William Smith, John Smith and O. C. Lenz were, and now are, co-partners doing business in the City of New York, and the State of New York, as manufacturers and dealers in fine gold and silver chains and jewelry, under the firm name of William Smith & Company, and that the plaintiffs, William C. Greene, B. W. Greene and George W. Briggs were, at the time hereinafter mentioned, and now are, co-partners doing business as manufacturers and dealers in gold jewelry, in the City of Providence, and State of Rhode Island.

Second. That at the times hereinafter mentioned, defendants E. Schwed and Simon H. Newhouse, were co-partners doing business in Kansas City, in said County of Jackson, as merchants and traders in gold and silver chains and jewelry under the firm name of Schwed & Newhouse; that defendant O. P. W. Bailey was, at said times, and now is, sheriff of said County of Jackson, and that defendant H. Heller was at said times, and now is, a non-resident of the State of Missouri.

Third. That heretofore, to-wit: On the fifteenth day of August, A. D. 1879, the said defendants, Edward Schwed and Simon H. Newhouse, under their said firm name, were justly indebted to the plaintiffs, William Smith, John Smith and O. C. Lenz, under their said firm name, in the sum of three thousand eight hundred and twenty-nine dollars and seventy-one cents, on account of gold and silver chains and jewelry sold and delivered by said plaintiffs, William Smith & Company, to said defendants, Schwed & Newhouse, at said City of New York, and that said sum of three thousand and eight hundred and twenty-nine dollars and seventy-one cents was at that time, and now is justly and wholly due, and payable to said plaintiffs, William Smith & Company from said defendants, Schwed & Newhouse. And that afterwards, to-wit: On the twenty-fourth day of November, 1879, the said defendants, Edward Schwed and Simon H. Newhouse, under their said firm name, were justly indebted to said plaintiffs, William C. Greene, B. W Greene and George D. Briggs, under their said firm name, in the sum of one thousand and twelve dollars and ninety-three cents, on account of jewelry before that time sold and delivered by said plaintiffs last named to said defendants Schwed & Newhouse, at said City of Providence, and that said sum of one thousand and twelve dollars and ninety-three cents was at that time last aforesaid, and now is, wholly due and unpaid said last named plaintiffs from said Schwed & Newhouse.

Fourth. That afterwards, to-wit: On the 12th day of February, A. D. 1880, the said plaintiffs, William Smith, John Smith and O. C. Lenz, commenced an action under their said firm name by attachment against said defendants, Edward Schwed and Simon H. Newhouse, under their said firm name, in the Circuit Court of Jackson County, Missouri, on said indebtedness hereinbefore set forth, of said last named plaintiffs, by filing in the office of the clerk of said Circuit Court, and with the clerk of said court, their petition showing the indebtedness of said defendants, Schwed & Newhouse to said last named plaintiffs, in said sum of three thousand eight hundred and twenty-nine dollars and seventy-one cents, on account of gold and silver chains and jewelry sold and delivered by said last named plaintiffs to said defendants, with a copy of the items of the account of said indebtedness therein, in said petition alleged, duly verified by affidavit referred to in, and duly attached to said petition, and that said sum last aforesaid and mentioned in said petition, was justly due and unpaid from said defendants, Schwed & Newhouse, to said last named plaintiffs,

praying judgment in their favor against said defendants Schwed & Newhouse for said sum, together with interest thereon, and for costs of that action. And at the time said last named plaintiffs filed with said clerk of said court, an affidavit of one James R. Riggins, the agent of said last named plaintiffs, and for them, which said affidavit duly stated that the said plaintiffs therein named, William Smith, John Smith and O. C. Lenz, has a just demand against the defendants, Edward Schwed and Simon H. Newhouse, therein named, and that the amount which said affiant believes the said plaintiffs therein ought to recover after allowing all just credits and setoffs, is the sum of three thousand eight hundred and twenty-nine dollars and seventy-one cents, and that he, said affiant, has good reasons to believe, and does believe, that the said defendants, Edward Schewd and Simon H. Newhouse are non-residents of the State of Missouri, and that said defendants have fraudulently conveyed and assigned their property and effects so as to hinder and delay their creditors, that said defendants have fraudulently disposed of their property and effects so as to hinder and delay their creditors; that the said Schwed & Newhouse did, on the twenty-sixth day of January, 1880, in the Circuit Court of Jackson county, Missouri, make a fraudulent confession of judgment for the sum of nine thousand five hundred and twelve dollars, in favor of one H. Heller, of Philadelphia, Pennsylvania, for the purpose of, and with intent to defraud and delay their bona fide creditors. That on said twelfth day of February, the said plaintiffs, William Smith, John Smith and O. C. Lenz, also, and at the time of the filing of said petition and affidavit, filed with the clerk of said court, in the office of said clerk, one bond executed by said plaintiffs last named as principals, and Israel M. Smith and Joseph S. Chick, resident householders of said County of Jackson, as securities, in the sum of seven thousand six hundred and fifty-nine dollars and forty-two cents, payable to the State of Missouri, conditioned that said plaintiffs named in said bond shall prosecute their action without delay and with effect, refund all sums of money that may be adjudged to be refunded to said defendants, Schwed & Newhouse, named in said bond, or found to have been received by said plaintiffs therein and not justly due to them, and pay all damages and costs that may accrue to any defendant or garnishee by reason of the attachment of or any process or proceeding in the suit, or by reason of any judgment or process therein. That on said day last aforesaid, the said clerk of said court, judged of the sufficiency of the penalty and the security of said bond, and duly approved the same and endorsed his approval thereon, and that said bond together with the said affidavit and petition were duly filed in the office of said clerk before the issue of the writ of attachment thereon as hereinafter stated. That thereupon, and on the said twelfth day of February, 1880, an original writ of attachment, duly issued in said action, out of the office of the clerk of said court, and under the seal of said court, directed to the sheriff of the said County of Jackson, returnable to the first day of the next April term, 1880, of said court, and commanding him, the said sheriff, to attach the lands, tenements, chattels, goods, rights, moneys, credits, evidences of debts, and effects of said defendants, Edward Schwed and Simon H. Newhouse, named therein, or so much thereof as will be sufficient to satisfy said plaintiffs' claim named in said writ, as sworn to and as hereinbefore stated, with interest and costs, and to summon as garnishee all persons in whose hands or possession, any personal property, rights, credits, evidences of debt, effects or money of said defendants, Edward Schwed and Simon H. Newhouse, or either of them, may be, or who may be named by said plaintiffs or their attorneys, as garnishees,

And the said writ further contained a summons to said defendants, Schwed & Newhouse, returnable to the first day of April term A. D. 1880, of said Circuit Court and commanding said defendants, Edward Schwed and Simon H. Newhouse, to appear in said Circuit Court of Jackson County, on the return day of said writ, and at the court house in Kansas City, in said Jackson County, to answer the said petition of said plaintiffs, William Smith, John Smith and O. C. Lenz, named therein. That said original writ of attachment and summons was, on the said twelfth day of February, A. D. 1880, delivered to said sheriff, and said sheriff duly executed said writ of attachment, by levying the same, on the said twelfth day of February, on the goods and chattels, property and effects of said defendants, Schwed & Newhouse, hereinafter set forth, consisting of the goods and chattels and merchandise embracing the entire stock of watches, jewelry, clocks, watchmaker's tools, and watch and clock materials in the store-room formerly occupied by said Schwed & Newhouse, at number five hundred and twenty Delaware street, Kansas City, Jackson County, Missouri, as will more fully appear fromthe sheriff's return to said writ of attachment andthe schedule herewith filed and marked "Exhibit A", and made a part of this petition, and that said summons has not, and cannot be served upon said defendants or either of them, because they had at the date of the issue thereof, and for a long time prior thereto, absented themselves from their usual places of abode in this state, and absconded and concealed themselves so that said process of laws cannot be served upon said defendants Schwed & Newhouse, or either of them.

Fifth. That afterwards, to-wit: On the twelfth day of February A. D. 1880, the said plaintiffs, William C. Greene, B. W. Greene and George D. Briggs, commenced an action, under their said firm name, by attachment against said defendants, Edward Schwed and Simon H. Newhouse, under their said firm name, in the Circuit Court of Jackson County, Missouri, on said indebtedness herein before set forth of said last named plaintiffs, by filing in the office of the clerk of said court, and with the clerk of said court, their petition, showing the indebtedness of said defendants, Schwed & Newhouse, to said last named plaintiffs, in said sum ot one thousand and twelve dollars and ninety-three cents, on account of gold and silver chains and jewelry sold and delivered by said last named plaintiffs to said defendants, with a copy of the items of the account of said indebtedness therein, in said petition alleged, duly verified by affidavit referred to in, and duly attached to said petition, and that said sum last aforesaid and mentioned in said petition, was justly due and unpaid from said defendants, Schwed & Newhouse, to said last named plaintiffs and praying judgment in their favor against said defendants, Schwed & Newhouse, for said sum together with interest thereon and for costs of that action, and at the same time said last named plaintiffs filed with said clerk of said court, in the office of said clerk, an affidavit of one James R. Riggins, the agent of said last named plaintiffs and for them, which said affidavit duly stated that the said plaintiffs therein named, William C. Greene, B. W. Greene and George D. Briggs, have a just demand against the defendants, Edward Schwed and Simon H. Newhouse, therein named, and that the amount which this affiant believes the said plaintiffs ought to recover, after allowing all just credits and set offs, is the sum of one thousand and twelve dollars and ninety-three cents,and that he, said affiant, has good reason to believe, and does believe, that the said defendants, Edward Schwed and Simon H. Newhouse, are non-residents of the State of Missouri, and that the said defendants have fraudulently conveyed and and assigned their property and effects so as to hinder and delay their

creditors; that said defendants have fraudulently disposed of their property and effects so as to hinder and delay their creditors, that the said Schwed & Newhouse did, on the twenty-sixth day of January, 1880, in the Circuit Court of Jackson County, Missouri, make a fraudulent confession of judgment for the sum of nine thousand five hundred and twelve dollars in favor of one H. Heller, of Philadelphia, Pennsylvania, for the purpose of and with the intent to defraud, hinder and delay their bona fide creditors; that on said twelfth day of February the said plaintiffs, William C. Greene, B. W. Greene and George D. Briggs, also, and at the time of the filing of said petition and affidavit, filed with the clerk of said court in the office of said clerk, a bond executed by said plaintiffs last named as principals and William Smith & Company, and Cady & Olmstead, resident householders of said County of Jackson, as securities, in the sum of two thousand and twenty-five dollars and eighty-six cents, payable to the State of Missouri; conditioned that said plaintiffs named in said bond, shall prosecute said action without delay and with effect, refund all sums of money that may be adjudged, to be refunded to said defendants. Schwed & Newhouse, named in said bond or found to have been received by said plaintiffs thereon and not justly due to them, and pay all damages and costs that may accrue to any defendant or garnishee by reason of the attachment of, or of any process or proceeding in the suit, or by reason of any judgment or process therein. That on said day last aforesaid, the said clerk of said court, judged of the sufficiency of the penalty and the security of said bond, duly approved of the same and endorsed his approval thereon, and that said bond, together with the said affidavit and petition, were duly filed in the office of said clerk before the issue of the writ of attachment thereon as hereinafter stated. That thereupon, and on the said twelfth day of February, A. D. 1880, an original writ of attachment, duly issued in said action out of the office of the clerk of said court, and under the seal of said court, directed to the sheriff of said County of Jackson, returnable to the first day of the next April term, 1880, of said court, to attach the lands, tenements, goods, chattels, rights, moneys, credits, evidences of debt and effects of said defendants, Edward Schwed and Simon H. Newhouse, named therein, or so much thereof as will be sufficient to satisfy said plaintiffs' claims, named in said writ as sworn to and as hereinbefore stated, with interest and costs, and to summon as garnishees all persons in whose hands or possession any personal property, rights, credits, evidences of debts, effects or money of said defendants, Edward Schwed and Simon H. Newhouse, or either of them, may be or who may be named by said plaintiffs or their attorneys as garnishees. And the said writ further contained a summons to said defendants, Schwed & Newhouse, returnable to the first day of the April term, A. D. 1880, of said Circuit Court and commanding said defendants, Edward Schwed and Simon H. Newhouse, to appear in said Circuit Court of Jackson County, on the return day of said writ and at the court house in Kansas City, in said Jackson County, to answer the said petition of said plaintffs, William C. Greene, B. W. Greene and George D. Briggs, named therein. That said original writ of attachment and summons was, on the said twelfth day of February, A. D. 1880, delivered to said sheriff and said sheriff duly executed said writ of attachment by levying the same, on the said twelfth day of February, on the goods and chattels, property and effects of said defendants, Schwed & Newhouse, hereinafter set forth, consisting of the goods and chattels and merchandise, embracing the entire stock of watches, jewelry, clocks, watchmaker's tools and watch and clock materials, in the store-room formerly occupied by Schwed & Newhouse, at number five hundred and

twenty Delaware street, Kansas City, Jackson County, Missouri, as will more fully appear by the sheriff's return to said writ of attachment and the schedule herewith filed, and marked "Exhibit A" and made a part of this petition, and that said summons has not and cannot be served upon said defendants or either of them, because they had at the date of the issue thereof, and for a long time prior thereto, absented themselves from their usual places of abode in this state, and absconded and concealed themselves so that said process of law cannot be served upon said defendants, Schwed & Newhouse, or either of them.

Sixth. That said suits of attachment of said plaintiffs against said defendants, Schwed & Newhouse, are still pending in said Circuit Court of Jackson County and undetermined, and the indebtedness therein sued for is still due and wholly unpaid said plaintiffs.

Seventh. That heretofore, to-wit: On the twenty-sixth day of January, A. D., 1880, prior to the commencement of said suits by attachment and to the levy of said writs of attachment on said property of defendants, Schwed & Newhouse, but after the indebtedness to said plaintiffs upon which said suits were instituted and said writs of attachment issued and levied as aforesaid, had accrued, the said defendants, Edward Schwed and Simon H. Newhouse, authorized a judgment to be entered on confession in the said Circuit Court of Jackson County, Missouri, at Kansas City, against them in favor of the defendant, H. Heller, for nine thousand five hundred and twelve dollars and fifty cents, with legal interest thereon, from said twenty-sixth day of January, 1880, for a pretended indebtedness owing to said H. Heller by said defendants, Schwed & Newhouse, upon a pretended note or bond of said Schwed & Newhouse in the said sum of nine thousand dollars, dated at Pittsburg, February 8th, 1879, and payable one day after date to the order of said defendant, H. Heller, and that on said twenty-sixth day of January, 1880, judgment was entered on said confession of siad Schwed & Newhouse, in said Circuit Court of Jackson County, in favor of said defendant, H. Heller, and against said defendants, Edward Schwed and Simon H. Newhouse, in the said sum of nine thousand five hundred and twelve dollars and fifty cents for debt with interest from said date thereon at the rate of six per centum per annum and for costs and charges of said defendant Heller, in that behalf expended and said defendant Heller, in said judgment had leave to sue out execution thereon forthwith.

Eighth. That thereafter, and on said twenty-sixth day of January, 1880, execution having been issued on said judgment and directed and delivered to the said defendant, O. P. W. Bailey, the then sheriff of said Jackson County, the personal property hereinafter described of said Edward Schwed and Simon H. Newhouse, consisting of goods, chattels, and merchandise, embracing the entire stock of watches, jewelry, clocks, watchmaker's tools and watch and clock materials, in the storeroom formerly occupied by said Schwed & Newhouse, at number five hundred and twenty Delaware street, Kansas City, Jackson County, Missouri, as will more fully appear by the schedule of items of said stock of goods herewith marked "Exhibit A" and made a part of this petition, and of the value of six (6) thousand dollars, was levied upon by and taken into possession of said defendant, O. P. W. Bailey, sheriff as aforesaid, under said execution, and the said defendant, O. P. W. Bailey, shereiff as aforesaid, by virtue and authority of said execution, has advertised said property, so levied on, for sale at public vendue, on February fourteenth, 1880, for cash, to the highest bidder, at said store room, number five hundred and twenty Delaware street, all the right, title and interest of said Edward Schwed and Simon H. New-

house have in said goods, wares and merchandise, to satisfy said execution and costs, and that said defendant, O. P. W. Bailey, is now in possession of all of said property of said defendants Schwed & Newhouse; claiming under and by virtue of said execution as aforesaid.

Ninth. That the said judgment in favor of said defendant, Heller, was fraudulently confessed by said defendants, Edward Schwed and Simon H. Newhouse, and for the purpose of covering up the property of said defendants, Edward Schwed and Simon H. Newhouse, and defrauding said plaintiffs in the collection of their just demands, That the said defendants, Edward Schwed and Simon H. Newhouse were not indebted to defendant Heller in the sum of nine-thousand dollars, or any other sum, at the time of the fraudulent confession of said judgment in his favor as aforesaid, bnt that said judgment was confessed without any consideration, and was confessed and rendered by said Circuit Court without any affidavit or statement of either said Heller or said Schwed and Newhouse filed in said Circuit Court as required by law showing in any wise the facts out of which said pretended indebtedness arose, and was, and is irregular, erronious, fraudulent and void, and the issue of said execution, and the threatened sale of property, hereinbefore mentioned, is to be made with the intention, on the part of both said Heller and the said Schwed and Newhouse, of defrauding the plaintiffs out of their just demands, and of transferring the ostensible ownership and possession of said property of said Schwed and Newhouse to said defendant Heller by said sale, so as to prevent plaintiffs, or any other creditor, from levying upon and selling any part thereof, or of reaching the same by process of law.

Tenth. That the said property siezed and levied upon by said defend, O. W. P. Bailey, as such sheriff, under and by virtue of said execution, and now in possession of said defendant, is the same property attached in the actions hereinbefore mentioned, insittuted by said plaintiffs against said defendants, Schwed and Newhouse, and that said property is now and was at the time of the levy of said writ of attachment and execution the property and effects of said Schwed and Newhouse. That the said property is the entire property owned by said defendants, Schwed and Newhouse, within the State of Missouri, and that said defendants, Schwed & Newhouse, have no other property whatsoever, of any kind, within said state, which can be reached by any process of law and that they were, at the date of the issuing of said attachments, and now are hopelessly insolvent and had then and now have absconded and absented themselves from their usual place of abode in this state, so that the ordinary and usual process of law cannot be served upon them.

Therefore plaintiffs pray judgment:

First. That the said judgment in favor of the said defendant H. Heller, and the proceeding under the execution issued thereon, and the levy and seizure of said property by said defendant, O. P. W. Bailey, be set aside and declared void.

Second. That the said defendants, Heller, Schwed and Newhouse, and each of them, be enjoined and restrained from in any way interfering with, disposing of, or incumbering said property, or the proceeds thereof, or any part thereof. That said defendant, O. P. W. Bailey, be enjoined and restrained from transferring the said property, or any part thereof, to said Heller, Schwed and Newhouse, or either of them, and from selling the same under said execution. And that said sheriff be directed and ordered to bring the proceeds of said property under said sale into this court, and the same be applied to the satisfaction and payment

of plaintiffs' said claims and costs, and for such other and further relief as may be just and equitable in the premises.

SCARRITT & RIGGINS, and
BOTSFORD & WILLIAMS,
Attorneys for Plaintiffs.

STATE OF MISSOURI, }
COUNTY OF JACKSON, } ss.

James R. Riggins, being duly sworn on his oath, states that the matters and things set forth in the foregoing petition are true to his own knowledge and belief. That he is one of the attorneys for the plaintiffs in this action, and the reason that the verification is not made by said plaintiffs is that they are not within the State of Missouri, and that the grounds of his knowledge and belief are the sworn statements of plaintiffs to said accounts of indebtedness mentioned, and letters received from said plaintiffs and their attorneys in the States of New York and Pennsylvania.

JAMES R. RIGGINS.

Sworn and subscribed before me, this twelfth day of February, 1880. And, I further certify, that I was duly qualified as such notary public on the thirteenth day of January, 1877, and that my term of office will expire on the thirteenth day of January, 1883.

In testimony whereof, I have hereunto set my hand and affixed my notorial seal.

ED. L. SCARRITT,
Notary Public.

[SEAL.]

Said Exhibit "A" is as follows, to-wit:

14 ladies' key-wind gold watches.
3 ladies' stem-wind gold watches.
1 gents' key-wind gold watch.
2 watch movements.
23 ladies' solid gold guards, with slides.
12 gents' solid gold vest chains.
22 ladies' solid gold necklaces.
12 ladies' solid gold bracelet chains.
196 plated vest chains.
147 gents' silver chains.
35 ladies' plated chains.
110 ladies' plated neck chains.
39 ladies' Roman gilt neck chains.
43 childrens' plated neck chains.
11 gilt slide guards.
384 gilt vest chains.
133 nickel and gilt vest chains.
90 nickel vest chains.
13 sets solid gold jewelry, jet and plain.
22 sets solid gold jewelry, cameo.
16 sets solid gold jewelry, cameo and coral.
23 sets solid gold jewelry, assorted.
418 solid gold jewelry, assorted and cameo.
18 solid gold lockets, cameo.
6 solid gold lockets, onyx.
3 solid gold lockets, plain.
35 gents' plated lockets, assorted.
16 gents' gold filled lockets, assorted.
30 gents' plated lockets.

12 plated lockets, engraved.
76 plated lockets, Roman.
60 solid gold rings, cameo.
18 solid gold rings, onyx.
10 solid gold rings, assorted.
27 solid gold rings, amethyst.
40 solid gold ladies' rings, assorted.
248 solid gold band rings, engraved.
36 solid gold misses' rings.
10 plated gold rings, cameo.
10 plated rings, amethyst.
18 plated rings, gents'.
16½ dozen gold split rings.
1 gross plated split rings.
10 solid gold scarf rings.
30 plated scarf rings.
88 plated filled rings, assorted.
29 coin silver rings.
40 plain filled rings.
153 gold filled rings.
13 pairs gents' solid gold cuff buttons, cameo.
20 pairs gents' solid gold cuff buttons, onyx.
96 pairs gents' solid gold cuff buttons, enameled and engraved.
45 pairs gents' solid gold cuff buttons, assorted.
260 pairs plated cuff buttons.
541 pairs plated cuff buttons, enameled and engraved.
96 pairs plated cuff buttons, cameo and stone.
15 dozen stud and collar buttons.
53½ dozen solid gold collar buttons.
26 dozen plated collar buttons.
127 gents' solid gold pins, assorted.
239 gents' solid gold pins, emblem.
9 ladies' solid gold pins.
32 pairs solid gold cuff pins.
109 pairs ladies' plated cuff pins.
50 plated scarf pins.
4 dozen ladies' plated pins.
6 dozen ladies' plated sash pins.
1½ dozen ladies' plated cuff pins.
22 gents' solid gold scarf pins.
201 gents' plated scarf pins.
92 ladies' and childrens' solid gold cuff pins.
22 ladies' plated shawl pins.
30 solid gold crosses.
18 plated jet crosses.
18 dozen plated crosses, assorted.
5 solid gold crosses, engraved and enameled.
14 solid gold crosses, charms.
244 gents' plated seals and lockets.
60 gents' plated seals, stone and cameos.
120 sets solid gold studs.
45 solid gold studs in diamond sets.
209 sets plated studs.
60 dozen plated studs.
22 solid gold studs, single stones.

423 pairs ladies' and misses' solid gold ear drops.
28 pairs solid gold ear drops.
18 pairs ladies' jet and pearl ear drops.
8 dozen plated hoop ear drops.
23 dozen plated assorted ear drops.
92 pairs coral wire ear drops.
4 dozen gents' plated seals.
1½ dozen gold "att" chains.
90 pieces gold plated trimmings.
2 gross silver chain.
2 gross plated hooks, swivels and bars.
15 dozen silver thimbles.
218 clocks, assorted sizes.
66 boxes watchmakers' tools and watch and clock materials.
25 dozen specks and eye glasses
2½ eye protectors.
1 dozen tin spectacle cases.
7 dozen leather spectacle cases.
13 boxes plated rings.
4 boxes plated charms.
4 boxes watch and clock oil.
1 box buffs.
7½ gross assorted watch keys.
2 boxes fancy jewelry.
1 box fancy cuff pins.
1 box jet ear rings.
1 box plated studs.
1 box swivels.
2 boxes collar buttons.
21 chamois skins.
2 drawers pithwood, etc.
1 lot wrapping twine.
1 case Geneva glasses.
1 pair jewelry scales.
1 office desk and fixtures.
1 coal stove and pipe.
1 lot coal.
1 gas lamp.
2 stools.
1 office chair.
1 lot shelving.
1 large iron safe, combination lock, and other articles not named and usually kept for sale in a jewelry store.

Endorsed upon the reverse of said petition, etc., is the following:

4518
WILLIAM SMITH *et al.*
vs.
EDWARD SCHWED *et al.*
Injunction to set aside judgment.
Filed, February 14th, 1880.
WALLACE LAWS, Clerk.
SCARRITT & RIGGINS and
BOTSFORD & WILLIAMS,
Attorneys for Plaintiffs.

And which said bond for injunction is in words and figures as follows, to-wit:

WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, partners, under the firm name and style of William C. Greene & Company, and
WILLIAM SMITH, JOHN SMITH and O. C. LENZ, partners under the firm name and style of William Smith & Company,
The Plaintiffs,

against

EDWARD SCHWED and SIMON H. NEWHOUSE, partners under the firm name and style of Schwed & Newhouse, and
H. HELLER, and
O. P. W. BAILEY, Sheriff,
The Defendants.

In the Circuit Court of Jackson County, Missouri, at Kansas City, at the April Term, A. D. 1880.

INJUNCTION BOND.

Know all men by these presents, That we, Wm. Smith & Co., of New York City, State of New York, and Wm. C. Greene & Co., of Providence, State of Rhode Island, as principals, and I. M. Smith, Joseph S. Chick and Cady & Olmstead, all resident house-holders of Jackson County, Missouri, as securities, are held and firmly bound unto Edward Schwed and Simon H. Newhouse, H. Heller and O. P. W. Bailey, in the sum of six thousand dollars ($6,000), lawful money of the United States of America, to be paid to the said Edward Schwed and Simon H. Newhouse, H. Heller and O. P. W. Bailey, their executors, administrators and assigns, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals. Dated, this twelfth day of February, A. D. 1880.

Whereas the above named plaintiffs have applied to the Circuit Court of Jackson County, at Kansas City, in said entitled cause, for an injunction to restrain said defendants, Heller, Schwed and Newhouse, from interfering in any way with the personal property mentioned in said action or from receiving the proceeds of the sale thereof under the execution mentioned in said action, or from transferring, disposing of, or encumbering said property; and for an injunction restraining said O. P. W. Bailey from paying or delivering over to said defendants, Heller, Schwed, Newhouse, or either of them, or to their agents or attorneys, any of the said property or the proceeds of the sale thereof under said execution. Now, the condition of this obligation is such, that, if the said plaintiffs and each and every one of them will abide the decision which shall be made in the final hearing of said injunction, and pay all sums of money, damages and costs that shall be adjudged against them, if

said injunction be dissolved on the final hearing of said cause, then this obligation to be void, otherwise to remain in full force and effect.

WILLIAM SMITH & CO.,
By SCARRITT & RIGGINS,
Their Attorneys in fact. [SEAL.]
WILLIAM C. GREENE & CO.,
By SCARRITT & RIGGINS,
Their Attorneys in fact. [SEAL.]
ISRAEL M. SMITH,
JOSEPH S. CHICK,
CADY & OLMSTEAD,
By L. S. CADY.

And afterwards, on Thursday, February, nineteenth, A. D. 1880, it being the eighty-seventh day of said term of said court, officers present as aforesaid, the following further proceedings were had in said cause, to wit:

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, Co-partners doing business under the firm name and style of William Smith & Company, and
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, Co-partners doing business under the firm name and style of William C. Greene & Company,
against
EDWARD SCHWED and SIMON H. NEWHOUSE, Co-partners doing business under the firm name and style of Schwed & Newhouse, H. HELLER, and O. P. W. BAILEY, Sheriff of said County of Jackson. } 4518.

And now at this day come said plaintiffs, by their attorneys, Scarritt & Riggins and Botsford & Williams, and also comes said defendant, O. P. W. Bailey, said sheriff, in his own proper person, and enters his own voluntary appearance herein to this action and to the application for a temporary injunction and also comes the other defendants, Edward Schwed and Simon H. Newhouse and H. Heller, by their attorneys, Bryant & Holmes, and enter their voluntary appearance to this action and to said application for a temporary injunction, and thereupon plaintiffs tender their application for a temporary injunction herein against said defendants, accompanied by the bond of plaintiffs, duly executed as required by law, in the penal sum of six thousand dollars, with Israel M. Smith, Joseph S. Chick and Cady & Olmstead, securities, and all parties having been fully heard by their counsel on said application, and said application having been submitted to the court, the court finds and adjudges that said application should be, and the same is hereby granted, and the said bond is good and sufficient and the same is by the court approved. Wherefore, it is considered ordered and adjudged by the court, that said defendants, Heller, Schwed and Newhouse, and each of them, together with their agents, be and they are hereby enjoined and restrained from in any way interfering with, disposing of or encumbering the property or any part thereof levied upon, seized by and in the custody of the defendant, O. P. W. Bailey, as such sheriff, as the property of said Schwed and Newhouse, being their entire stock at their late place of business at house number

five hundred and twenty Delaware Street, Kansas City, Missouri, and a particular itemized statement of which stock of goods is on file with plaintiffs' petition in this cause, and levy having been made by said sheriff under an execution directed to and in the hands of said sheriff, issued out of this court on a judgment by confession rendered by this court January the twenty-six, A. D. 1880, in favor of H. Heller, and against said Schwed and Newhouse. It is further considered ordered and adjudged, that defendant, O. P. W. Bailey, sheriff as aforesaid, be, and he is hereby enjoined and restrained from transferring out of his custody and possession said property or any part thereof to said Schwed, Newhouse or Heller, or either of them, or to any person whomsoever, and from selling said property or any part thereof under said execution, and from taking any further steps whatsoever, under said execution, relating to said property.

The issue and service of this injunction upon said defendants and each of them, in accordance with the foregoing order, is hereby waived by said defendants and each of them.

It is further ordered that this injunction be and the same is hereby continued in force until the final hearing of this cause.

And afterwards, on April thirty, A. D. 1880, and during the April term, 1880, of said court, begun and held at Kansas City, Jackson County, State of Missouri, on the second Monday in April, 1880, officers present as aforesaid, the following answer was filed in said court in said cause by said defendants, to-wit:

In the Jackson County Circuit Court at Kansas City, Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
against
EDWARD SCHWED *et al.*
Defendants.

Defendants, for answer to plaintiffs' petition, deny each and every allegation thereof excepting only such as are hereinafter expressly admitted. Defendants admit that O. P. W. Bailey was, at the times mentioned in the petition and still is, sheriff of Jackson County. Defendants admit that the said defendants, Edward Schwed and Simon H. Newhouse, authorized a judgment to be entered on confession in the said Circuit Court of Jackson County at Kansas City, against them, in favor of the defendant, H. Heller, for nine thousand five hundred and twelve dollars and fifty cents, with legal interest thereon from the 26th day of January, 1880, and defendants admit that on said 26th day of January, 1880, judgment was entered on said confession, of said Schwed and Newhouse, in said Circuit Court of Jackson County, in favor of said H. Heller, and against said defendants, Edward Schwed and Simon H. Newhouse, in the said sum of nine thousand, five hundred and twelve dollars and fifty cents, for debt, with interest from said date thereon at the rate of six per centum per annum, and for costs and charges of said defendant, Heller, in that behalf expended, and that said defendant, Heller, in said judgment, had leave to sue out execution thereon forthwith. And the defendants admit that thereafter and on the said 26th day of January, 1880, execution having been issued on said judgment and directed and delivered to the said defendant, O. P. W. Bailey, the then sheriff of Jackson County, the personal property described in the petition of said Edward Schwed and Simon H. Newhouse, consisting of goods, chattels and merchandise embracing the entire stock of watches, jewelry, clocks, watchmaker's tools and watch and clock

materials, in the store-room formerly occupied by said Schwed and Newhouse, at number five hundred and twenty Delaware Street, Kansas City, Jackson County, Missouri, and levied upon and taken into the possession of said defendant, O. P. W. Bailey, sheriff as aforesaid, by virtue and authority of said execution, had advertised said property so levied upon, for sale, at public vendue, on February 14, 1880, for cash, to the highest bidder, at said store-room number five hundred and twenty Delaware Street, all the right, title, and interest of said Edward Schwed and Simon H. Newhouse, in said goods, wares, and merchandise, to satisfy said execution and costs, and that said defendant, O. P. W. Bailey, was at the commencement of this suit in possession of all of said property of said defendants, Schwed and Newhouse, claiming under and by virtue of said execution as aforesaid. And the defendants further answering, say that said judgment confessed by said defendants, Edward Schwed and Simon H. Newhouse, in favor of said defendant, H. Heller, was confessed in good faith for the amount of a debt justly due and owing by said Schwed and Newhouse to said Heller. Wherefore defendants ask judgment &c., &c.

TICHENOR & WARNER and
BRYANT & HOLMES,
For Defendants.

And afterwards, on September 21, A. D., 1880, it being the 68th day of said April Term, 1880, of said court, officers present as aforesaid, said plaintiffs filed in said Court the following petition, affidavit and bond for a removal of said cause to the United States Circuit Court for the Western Division of the Western District of Missouri, to-wit:

In the Jackson County Circuit Court at Kansas City, State of Missouri, April Term, A. D., 1880.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners, doing business under the firm name and style of William Smith & Company, and
WILLIAM C. GREENE, BYRON W. GREENE and GEORGE D. BRIGGS, co-partners, doing business under the firm name and style of William C. Creene & Company,
Plaintiffs,

against

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners, doing business under the firm name and style of Schwed & Newhouse, and
HERMAN HELLER, and O. P. W. BAILEY, Sheriff of said County of Jackson,
Defendants.

Petition of plaintiffs for a removal of this cause to the United States Circuit Court for the Western Division of the Western District of Missouri.

The above named plaintiffs represent that the said plaintiffs, William Smith, John Smith, O. C. Lenz and William C. Greene, were at the time of the institution of this suit and ever since have been and still are resident citizens of the State of New York, and that the other plaintiffs, Byron W. Greene, and George D. Briggs, were at the time of the institution of this suit and ever since have been and now are resident citizens of the State

of Rhode Island. That the defendants, Edward Schwed, Simon H. Newhouse, and Herman Heller, were at the time of the institution of this suit and ever since have been and now are resident citizens of the State of Pennsylvania, and that the other defendant, O. P. W. Bailey, was at the time of the institution of this suit and ever since has been and now is a a resident citizen of the State of Missouri. That this is a suit of a civil nature in equity, in which the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars and involves the sum of over five thousand dollars, ($5,000), and in which there is a controversy between citizens of different states and that this suit was brought in said Jackson County Circuit Court, February 14th, 1880. That this suit has not been tried, and that this is the first term of said Jackson County Circuit Court at which this cause could be tried.

Said plaintiffs herewith file their bond with good and sufficient security for their entering in said United States Circuit Court on the first day of the next session thereof, of a copy of the record in this suit, and for the payment of all costs that may be awarded by said last named court, if said court shall hold that this suit was wrongfully or improperly removed thereto, and also, for there appearing and entering special bail in this suit, if special bail was originally requisite therein.

Wherefore plaintiffs pray that this suit may be removed into the said United States Circuit Court for the Western Division of the Western District of Missouri, pursuant to the act of Congress in such cases made and provided.

SCARRITT & RIGGINS, and
BOTSFORD & WILLIAMS,
Attorneys for Plaintiff.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

James R. Riggins, one of the attorneys in said cause of said plaintiffs, being duly sworn, states that the matters and statements contained in the foregoing are true.

JAMES R. RIGGINS.

Sworn to and subscribed before me, this fifteenth day of September, 1880.

W. A. ALDERSON,
Notary Public.

[SEAL.]

BOND FOR REMOVAL IN THE ABOVE CAUSE.

Know all men by these presents, That we, William Smith, John Smith, O. C. Lenz, William C. Greene, Bryon W. Greene and George D. Briggs, as principals, and John H. North, as security, acknowledge ourselves to owe and to be justly indebted to Edward Schwed, Simon H. Newhouse, Herman Heller and O. P. W. Bailey, in the sum of five hundred dollars ($500), to the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators firmly by these presents.

The conditions of the foregoing bond are such that, whereas, the above bounden principals, William Smith, John Smith, O. C. Lenz, William C. Greene, Byron W. Greene and George D. Briggs, who are plaintiffs in a certain suit pending in the Circuit Court of Jackson County, at Kansas City, State of Missouri, against the aboved named Edward Schwed, Simon H. Newhouse, Herman Heller and O. P. W. Bailey, as defendants therein, have petitioned for the removal of said suit from said Jackson County Circuit Court to the United States Circuit Court for the Western Division of the Western District of Missouri.

Now, therefore, if the said plaintiffs and principals shall enter into said United States Circuit Court on the first day of its next session, a copy of the record in said suit, and pay all costs that may be awarded by said United States Circuit Court, if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear in said United States Circuit Court and enter special bail in said suit, if special bail was originally requsite therein, then, the foregoing bond and obligation shall be void, otherwise of full force and effect.

Given under our hands and seals, this eighteenth day of September, A. D. 1880.

WILLIAM SMITH,
JOHN SMITH,
O. C. LENZ,
WILLIAM C. GREENE.
BYRON W. GREENE.
GEORGE D. BRIGGS,
By SCARRITT & RIGGINS,
their attorneys in fact.
JOHN H. NORTH.

And thereupon, on said last named day of said last named April term, A. D. 1880, of said court, the following order of removal was made in said cause by said court, viz:

WILLIAM SMITH *et al.*,
vs. } 4518.
EDWARD SCHWED *et al*,

And now comes said plaintiffs and file petition and bond for a removal of this cause to the United States Circuit Court for the Western District of Missouri, and it appearing that said bond is good and sufficient, the same is now here approved and it is ordered that this cause be and the same is hereby removed to the United States Circuit Court for the Western Division of the Western District of Missouri.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

I, Wallace Laws, Clerk of the Circuit Court within and for the county and state aforesaid, do certify that the foregoing is a true and perfect transcript of the record and proceeding in a cause lately pending in said court, wherein William Smith *et al.* were plaintiffs, and Edward Schwed *et al.* were defendants, as the same now appears of record and on file in my office.

In witness whereof, I hereunto set my hand and affix the seal of said Circuit Court at office in Kansas City, this 8th day of October, 1880.

WALLACE LAWS,
Clerk.

[SEAL.]

In the Circuit Court Jackson County, at Kansas City, Missouri,

WILLIAM SMITH *et al.*
Plaintiffs,
against } No. 4518.
EDWARD SCHWED *et al.*
Defendants.

Clerk's fees, (court)	$ 5 50
Clerk's fees, transcript	15 30
Total	$20 80

June sixteenth, 1880, deposition for plaintiff, $11.50. Paid by plaintiff.
July fifth, 1880, deposition for plaintiff, $20.00. Paid by Plaintiff.
Witness' fees, deposition for plaintiff, $2.50.

Endorsed upon the reverse of said petition, etc., is the following :

261.

WILLIAM SMITH *et al.*
vs.
EDWARD SCHWED *et al.*

Transcript.
Filed, Oct. 9th, 1880.
H. C. GIESBERG. Clerk.

And the appearance of said plaintiffs is in words as follows, to-wit :

In the United States Circuit Court for the Western Division of the Western District of Missouri.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners, doing business under the firm name and style of William Smith & Company, and
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, co-partners, doing business under firm name and style of William C. Creene & Company,
Plaintiffs,

vs.

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners, doing business under the firm name and style of Schwed & Newhouse, and
H. HELLER, and O. P. W. BAILEY, Sheriff of said County of Jackson,
Defendants.

And now at this day come the said plaintiffs and file a transcript of the record and proceedings of, with the depositions in, said cause, and enter their appearance to this action in said United States Circuit Court for the Western Division of the Western District of Missouri.

(Signed) SCARRITT & RIGGINS and
BOTSFORD & WILLIAMS,
For Plaintiffs.

And afterwards, to-wit : At the October Term, A. D. 1880, of said Court the following entry appears on the order book, to-wit :

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

This day come defendants, by their solicitors, and file motion for new injunction bond, and also motion to dissolve injunction.

And said motion for new injunction is as follows, to-wit :

In the Circuit Court of the United States for Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
vs.
EDWARD SDHWED *et al.*

Now come the defendants and move the court to require the plaintiffs to give a new and sufficient bond herein, because :

First. The bond given in this cause has never been executed by the plaintiffs as required by the statute of the State of Missouri.

TICHENOR & WARNER
BRYANT & HOLMES,
Defendants' Solicitors.

And said motion to dissolve injunction is as follows, to-wit :

In the Circuit Court of the United States for the Wistern Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
vs.
EDWARD SCHWED *et al.*

Now come the defendants and move the court to dissolve the injunction in this cause for the following reasons, to-wit :

First. Because there is no equity in the bill.

Second. Because the bill is not verified according to law and the practice in the courts of chancery.

Third. Because the purpose and effort of said injunction is to stay proceedings in the Circuit Court of Jackson County, Missouri.

Fourth. Because this Court has no jurisdiction either to continue or grant the injunction prayed for in the bill.

TICHENOR & WARNER,
BRYANT & HOLMES,
Defendants' Solicitors.

And afterwards, to-wit : At said October term the following entry appears on the order book, to-wit :

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al*

This day come the parties, by their solicitors, and the motion to dissolve the injunction herein is called for hearing, argued by counsel and submitted *et curia advisare vult.*

And afterwards, to-wit : At said October term the following entry appears on the order book, viz :

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

This day come the parties, by their solicitors, and thereupon, upon consideration of the motion heretofore submitted, it is ordered that said order be denied.

And afterwards, to-wit : At said October term the following entry appears on the order book, to-wit :

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

Upon motion of complainants, it is ordered that both parties have leave to take testimony before the first day of next term.

And afterwards, to-wit: At said October term the following entry appears on the order book, to-wit:

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

In pursuance of a stipulation this day filed, it is ordered that the order heretofore entered, in respect of testimony herein, be set aside. And it is further ordered that the testimony herein be taken in pursuance of said stipulation.

(Said stipulation has been mislaid and is therefore omitted in this transcript.)

And afterwards, to-wit: On February nineteenth, A. D. 1881, in vacation, the following entry appears on the order book, to-wit:

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

This day come the parties and file stipulation respecting the opening of depositions herein.

And said stipulation is in words as follows, to-wit:

In the Circuit Court of the United States Western District of Missouri, Western Division.

WILLIAM SMITH *et al.*
Complainants,
vs.
SCHWED & NEWHOUSE *et al.*
Defendants.

It is hereby stipulated and agreed that all depositions which have been taken or which may be taken in said cause, by either party thereto, may be opened by the clerk of said court as soon as they may be or have been received and filed by him, without an order of the court for that purpose.

BOTSFORD & WILLIAMS,
For Complainants.
BRYANT & HOLMES,
For Defendants.

And afterwards, in vacation, in said month of February, the following entry appears on the order book, to-wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } Sct.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Chambers.

Friday, February twenty-fifth, 1881, before the Honorable Arnold Krekel, Judge.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE, and GEORGE D. BRIGGS,
Plaintiffs,
vs.
EDWARD SCHWED and SIMON H. NEWHOUSE, H. HELLER, and O. P. W. BAILEY,
Defendants.

Upon the application and hearing of the above named plaintiffs for an order in this cause on said defendants, Edward Schwed and Simon H. Newhouse, to produce books, etc.

First. It is ordered that said defendants, Edward Schwed and Simon H. Newhouse, and each of them, within five days after the service of a certified copy upon them, or either of them, as hereinafter provided, produce before the Clerk of the Circuit Court of the United States for the Southern District of New York and deposit in his office with him in the City of New York, the following books and papers: The day-book, ledger, cash book, momorandum books, discount books, letter books, invoices, and all other account books, made and kept by said defendants, Schwed and Newhouse, or either of them, in their business as wholesale jewelers at the City of Pittsburg, in the State of Pennsylvania, during the years A. D. 1879, 1880 and 1881, either on their own account or as agents of Mrs. Edward Schwed or of any other person, and also the day-books, ledgers, invoice books, cash books, journals, memorandum books, discount books, letter books, and all other account books, made and kept by them at their place of business as wholesale jewelers at Kansas City, in the State of Missouri, during the years A. D. 1879 and 1880, all of said books and papers to remain in the custody of said clerk in his said office in said City of New York for thirty days thereafter, and that said plaintiffs and their counsel have access to the same, (and have copies made by the examiner of any part thereof pertaining to the subject matter of the suit on payment therefor,) and to fully inspect and examine the same.

Second. It is further ordered that said Clerk of said United States Circuit Court for said Southern District of New York, be and he is hereby specially appointed an examiner of this court, and that said defendants, Edward Schwed and Simon H. Newhouse, be examined as witnesses before the said examiner in relation to said books and papers and all entries therein, and on such other matters as are relevant to the issues in this cause, and that for that purpose said examiner be furnished with a copy of the bill and answer in this cause. Such examination to commence in the office of said clerk, at said City of New York, on the tenth (10) day of March, A. D. 1881, and continued from day to day until completed; and that said defendants, Schwed and Newhouse, do both appear at the office of said clerk on said tenth (10th) day of March, A. D. 1881, at the hour of ten (10) of the clock in the forenoon of that day, and then and there answer such questions before said examiner as may be propounded to them, or either of them, touching the matters aforesaid or any of them.

That said examination be taken orally before said examiner in the presence of the parties, or their solicitors, in the manner provided by the third (3rd) paragraph of rule sixty-seven (67) of the equity rules of the circuit courts of the United States, and that said examination, when concluded, be duly certified and returned into this court, together with all exhibits filed therewith. It is further ordered that duly certified copies of this order be forthwith mailed by the clerk of this court to the Marshal of the United States for the Western District of Pennsylvania and to the Marshal of the United States for the Southern District of New York for service on said Edward Schwed and Simon H. Newhouse; that this order be served by delivering to each of them a duly certified copy thereof, and that said Marshal make return to this court of such service according to law. It is further ordered that a duly certified copy of this order together with a certified copy of the proceedings in this case be mailed to

said Clerk of the United States Circuit Court for the Southern District of New York.

ARNOLD KREKEL,
Judge.

Which said application is in words and form as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS,
Plaintiffs,

against

EDWARD SCHWED, SIMON H. NEWHOUSE, H. HELLER, and O. P. W. BAILEY,
Defendants.

Application for order on defendants, Edward Schwed and Simon H. Newhouse, to produce certain books and papers.

To the Honorable Arnold Krekel, Judge of said Court:

Your petitioners, William Smith, John Smith, and O. C. Lenz, doing business under the firm name of William Smith and Company, and William C. Greene, B. W. Greene and George D. Briggs, doing business under the firm name of William C. Greene and Company, respectfully represent:

First. That heretofore, to-wit: On the twelfth day of February, 1880, your petitioners commenced actions by attachment in the Circuit Court of Jackson County, Missouri, to recover the indebtedness therein named against Edward Schwed and Simon H. Newhouse, under the firm name of Schwed and Newhouse, in which said actions, writs of attachment, duly issued, were levied upon the personal property of said defendants, then situate at five hundred and twenty Delaware Street, Kansas City, Missouri.

Second. That at the time of said levy, said property was in the possession of defendant, O. P. W. Bailey, under and by virtue of the levy, of a writ of execution issued by said Circuit Court of Jackson County on a judgment confessed therein for nine thousand dollars and costs by said Schwed and Newhouse in favor of defendant, H. Heller, on the twenty-sixth day of January, 1880.

Third. That this present action was brought to the said Circuit Court of Jackson County to set aside said judgment by confession as fraudulent and void, and as confessed by said Schwed and Newhouse for the purpose of defrauding and delaying these attaching creditors of their just credits and demands and that said Heller participated in said fraud, and to subject said property so levied upon by virtue of said execution by said defendant, O. P. W. Bailey, to the lien and claim of said attachment and to enjoin the sale of said property under said execution, and for other and proper relief in the premises.

Fourth. That such proceedings have been had in said cause, that the same has been duly removed to this court, issue joined thereon and the same has been set down for final hearing at the May term, 1881, of this court.

Fifth. That depositions *de bene esse* of said Edward Schwed have been taken by your petitioners in said action, touching the business of said Schwed and Newhouse ; that it appears therefrom that your petitioners so charge the facts to be that at the same time the said judgment for nine thousand dollars was fraudulently confessed at the Jackson County Circuit Court, the said Schwed and Newhouse confessed judgment in the Court of Comman Pleas of Allegheny County, number one, in the City of Pittsburgh, and State of Pennsylvania, in favor of said Heller for the sum of five thousand dollars, and the execution of said judgment was issued and levied on the entire stock in trade of said Schwed and Newhouse in Pittsburgh, Pennsylvania, on the same day that the judgment was confessed and the execution levied on the entire stock in trade of said Schwed and Newhouse in Kansas City, Missouri. That at the sheriff's sale under said levy at Pittsburgh, said Heller, by himself and his agents and the employees and agents of said Schwed and Newhouse purchased all of the said stock in trade of said Schwed and Newhouse, excepting a small amount purchased by *bona fide* purchasers; but neither Heller, his agents and employees, or defendants Schwed and Newhouse's employees paid any money or other thing therefor, and the said Schwed and Newhouse remained in possession of said stock of goods, and have since that time been selling and disposing of the same under the false and fraudulent pretence of being and acting as the agents of the wife of said Schwed. That the cash book, day book, ledger, invoices, discount book, and other account books of said Schwed and Newhouse for the years 1879 and 1880, made and kept by said Schwed and Newhouse in said years up to the time of said levy remained in the hands of said Schwed and Newhouse and were used by them in making entries of purchases, sales, discounts, invoices, accounts of moneys received and paid out both as to the said business of Schwed and Newhouse existing and unsettled and undisposed, as well as the business of said Schwed and Newhouse as pretended agents of the wife of said Schwed, since said sale and the said books are now in the possession of said Schwed and Newhouse—the said Schwed having the said books in his possession during his said examination as a witness, and refusing to permit your petitioners or their counsel to examine and inspect the same, under the pretence that they relate to the business of his said wife, and refusing to answer any questions relating thereto. That said books contain entries made by said Schwed and Newhouse relating to the receipt of and payment out of moneys by said Schwed and Newhouse both before and after the said sale from their said business and to their creditors and others and in the carrying on of their said business of such pretended agency, the said entries both before and after said sale, being made in the same books and the business of said Schwed and Newhouse on their own account and of the pretended agency being entered therein without any discrimination between the same and as though the said business were as in truth, and in fact they are, one and the same and that said entries and said books are material and necessary to your petitioners to show the fraudulent character of said judgments by confession and of said sale under said execution.

That the books of account, day books, invoices, bills and discount and cash books kept by said Schwed and Newhouse at Kansas City during the years 1879 and 1880 also necessary and material to your petitioners for the same purpose and are now in the possession of said Schwed and Newhouse. That said Schwed is now in Pittsburgh, Pennsylvania, and said Newhouse is, as your petitioners are informed and verily believe, now in New York City, and your petitioners are informed that they are about to commence business in said City of New York.

Your petitioners pray for an order that the said Edward Schwed and Simon H. Newhouse produce and deposit the day books, ledgers, cash books, memorandum books, invoices, ledgers, discount books, letter books and all other account books kept and made by them, or either of them, in their said business at Pittsburgh and Kansas City during the years 1879 and 1880 and 1881, in the office of the clerk of this court within ten days from a service of a copy of the order to be made herein, to enable your petitioners to examine and take copies of said entries, and that said books remain in said clerks' office thirty days for that purpose.

(Signed) WILLIAM SMITH et al,
By SCARRITT & RIGGINS and
BOTSFORD & WILLIAMS,
Their Solicitors.

James S. Botsford, one of the solicitors of said petitioners, being duly sworn, says: that the matters and things set forth in the foregoing petition are true as he verily believes.

(Signed) JAMES S. BOTSFORD.

Sworn to and subscribed to before me, this twenty-third day of February, 1881. (Signed) H. C. GEISBERG,
Clerk,
By WARREN WATSON, D. C.

And afterwards, to-wit: February twenty-sixth, A. D. 1881, in vacation, the following entry appears on the order book, to-wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Chambers, Saturday, February twenty-sixth, A. D. 1881, before the Honorable Arnold Krekel, Judge.

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

Upon the application of complainants, it is ordered that the deposition of Edward Schwed, and the exhibits thereto attached, be transmitted by the clerk of this court to the clerk of the Circuit Court of the Southern District of New York, examiner of this court under the order of the Honorable Arnold Krekel, Judge, of the date February twenty-fifth, 1881, with a copy of this order and of the said order of February twenty-fifth; and it is further ordered that said examiner safely keep said depositions and exhibits subject to the inspection of the parties and their solicitors until the matter of reference to him be determined and that thereupon he return said depositions and exhibits with his report as such examiner.

(signed) A. KREKEL,
Judge.

And afterwards, to-wit: At the regular May term, A. D. 1881, of said court, the following entry appears on the order book, to-wit:

WILLIAM SMITH *et al.*
against
EDWRRD SCHWED *et al.*

This day come complainants, by their solicitors, and file petition for leave to file amended bill herein.

And said petition is in words as follows, to-wit :

In the Circuit Court of the United States, Western District of Missouri.
In Chancery. May term, A. D. 1881.

WILLIAM SMITH, JOHN SMITH, O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS,
Complainants,
against
EDWARD SCHWED, SIMON H. NEWHOUSE, H. HELLER, and O. P. W. BAILEY,
Defendants.

The petition of the above named complainants, and of the Seth Thomas Clock Company, the E. N. Welch Manufacturing Company, and Thomas Quayle, respectfully showeth :

That said Seth Thomas Clock Company at the times hereinafter mentioned, was and now is a corporation duly organized under the laws, and a citizen of the State of Connecticut.

That the E. N. Welch Manufacturing Company at said times was and is a manufacturing corporation duly organized under, and a citizen of the State of Connecticut, and Thomas Quayle was at said times and now is a citizen of the State of Rhode Island.

That prior to the institution of the present action herein, said Seth Thomas Clock Company, E. N. Welch Manufacturing Company and T. Quayle were creditors of defendants herein, Schwed and Newhouse, for goods, wares and merchandise sold and delivered on account, and that after the institution of this suit, said Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quayle, as such creditors, commenced proceedings by attachment in the Circuit Court of Jackson county within said district against said defendants, Schwed and Newhouse, and that writs of attachment were issued in said actions delivered to said defendant O. P. W. Bailey, as sheriff of the said county, and by him levied on the goods, chattels, moneys and effects of said Schwed and Newhouse in his hands and under his control by virtue of the execution issued on the fraudulent confessed judgment in favor of defendant Heller mentioned in the original petition herein, and by virtue of the sale of said property under the writs of attachment issued in the actions of said Wm. Smith et al. and Wm. C. Greene et al. against said Schwed and Newhouse as stated in the original petition herein. That said property seized and levied upon by said defendant O. P. W. Bailey, as such sheriff, under and by virtue of the said writs of attachment in favor of said Smith & Company and Greene & Company, was sold thereunder after the commencement of this suit herein, and the proceeds of said sale, amounting to the sum of eight thousand two hundred and fifty dollars, were in the hands of said sheriff at the time of the issuing of the attachments and the levy of the writs therein on said funds in favor of said Seth Thomas Clock Company, E. N. Welch Manufacturing Company and T. Quayle, and that said last named parties acquired a lien thereby on said funds subject to the priorities of said Wm. Smith & Company and Wm. C. Greene & Company as herein stated.

That the writs of attachment in favor of said Seth Thomas Clock Company, E. N. Welch Manufacturing Company and T. Quayle, were not

and could not be levied upon any other property except that in the hands of said sheriff; that defendants Schwed and Newhouse were insolvent, and had no other property that could be reached or discovered by the ordinary process of law.

That since the institution of said suit herein and after the removal hereof to this court and after issue joined and the cause set down for final hearing, the plaintiffs herein, Wm. Smith & Company and William C. Greene & Company, and the Seth Thomas Clock Company, and E. N. Welch Manufacturing Company, and T. Quayle have each respectfully recovered judgments on their respective claims against said Schwed and Newhouse in the Circuit Court of Jackson county, Missouri, and at the April term, A. D. 1881, thereof in the respective actions upon which said writs of attachment issued, and for which the same claims and demands for which said attachments were originally sued out and all levied upon said property of defendants Schwed and Newhouse.

That the amount of said judgments are as follows:

Wm. Smith & Co	$4,174 38
Wm. C. Greene & Co	1,104 09
Seth Thomas Clock Co	1,518 49
E. N. Welch Manufacturing Co	455 58
T. Quayle	356 45

That no execution has issued on said judgments, because said defendants, Schwed and Newhouse, are insolvent, are non-residents of the State and have no property, real or personal, of any kind in this State upon which a levy could be made and execution or other process of law would be utterly unavailing, and said judgments are wholly due and unpaid.

Your petitioners therefore respectfully pray that said Seth Thomas Clock Company, E. N. Welch Manufacturing Company and T. Quayle may be permitted to be made parties complainants in this cause with said William Smith & Company and William C. Greene & Company, and that your petitioners may thereupon be allowed to file forthwith a supplemental bill of complaint herein setting up therein the rights of the new parties thereto and the matters and things herein mentioned as occuring since the commencement of this cause and that they may have the benefit of said cause, the original bill and all the proceedings thereunder in their supplimental bill, the same as though they had been original parties thereto, and your petitioners will ever pray.

SCARRITT & RIGGINS, and
BOTSFORD & WILLIAMS,
For Petitioners.

And afterwards, at said May term, the following order appears on the order book, to-wit:

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

This day again come the parties by their solicitors, the complainants by Botsford & Williams, and the defendants by Bryant & Holmes, and thereupon the petition for leave to sue herein is submitted to the court; and upon consideration of the premises, the court doth order that the supplementary bill herein be filed without prejudice, and the said defendants take leave to plead by August rules.

And said supplementary bill is in words as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri. At the May term, A. D. 1881.

To the Honorable Judges of the Circuit Court of the United States of the Western Division of the Western District of Missouri.

Your orators, William Smith, John Smith and O. C. Lenz, co-partners doing business under the firm name of William Smith & Company and citizens of the State of New York, William C. Greene, B. W. Greene, and George D. Briggs, co-partners doing business under the firm name of William C. Greene & Company, and citizens of the State of Rhode Island, the Seth Thomas Clock Company, a corporation duly organized and existing under the laws of the State of Connecticut and a citizen of said State of Connecticut, E. N. Welch Manufacturing Company, a corporation duly organized and existing under and by virtue of the laws of Connecticut and a citizen of said State of Connecticut, Thomas Quayle a citizen of the State of Rhode Island, doing business under the firm name of T. Quayle & Company, complain of Edward Schwed and Simon H. Newhouse, doing business under the firm name of Schwed & Newhouse, and H. Heller, citizens of the State of Pennsylania, and O. P. W. Bailey a citizen of the State of Missouri.

And upon leave of court first had and obtained allege:

First. That at the times hereinafter mentioned, your orators were and now are citizens of the several states as herein alleged, and defendants citizens of the said states of Pennsylvania and Missouri as herein alleged.

Second. That heretofore, to-wit: On the fourteenth day of February, A. D. 1880, your orators William Smith, John Smith and O. C. Lenz, and William C. Greene, B. W. Greene and George D. Briggs, under their respective firm names, filed their certain petition in the circuit court of Jackson county, in the State of Missouri, within said district, against said defendants, Edward Schwed and Simon H. Newhouse, under their said firm name and said H. Heller and said O. P. W. Bailey, as sheriff of said county of Jackson, alleging among other things, that said Schwed and Newhouse under their firm name, were justly indebted to plaintiffs therein, William Smith and Company, for goods before that time sold and delivered in the sum of thirty-eight hundred and twenty-nine dollars and seventy-one cents ($3,829.71), and to plaintiffs, William C. Greene and Company, for goods sold and delivered, in the sum of eleven hundred and twelve dollars and ninety-three cents ($1,112.93), that said sums of money were due and unpaid; that said plaintiffs, William Smith and Company and William C. Greene and Company, respectively, had heretofore, to-wit: On the twelfth day of February, A. D. 1880, commenced seperate actions by attachment in said Circuit Court of Jackson county, against said defendants, Schwed and Newhouse, on said indebtedness and that writs of attachments had duly issued therein, directed and delivered to O. P. W. Bailey, as sheriff of said county of Jackson, against said defendants, Schwed and Newhouse, and had been levied on said last named day upon the stock of jewelry, watches, clocks, watchmaker's tools and watch and clock materials, the goods and chattels of said Schwed and Newhouse, then situate in the store-room formerly occupied by them at five hundred and twenty Delaware Street, in the City of Kansas, Jackson county, Missouri, by said defendant, O. P. W. Bailey, as such sheriff of said Jackson county. That before that time, to-wit: On the twenty-sixth day of January, A. D. 1880, said defendants, Schwed and Newhouse, had fraudu-

lently confessed judgment in favor of defendant Heller in the said Circuit Court of Jackson county, Missouri, in the sum of nine thousnad five hundred and twelve dollars and fifty cents ($9,512.50) and costs, and that on said judgment there had issued forthwith out of said Circuit Court of Jackson county an execution directed and delivered to said O. P. W. Bailey as such sheriff, and which said execution had been on the same day levied upon the said stock of jewelry and the said stock of other goods and chattels of the said defendants, Schwed and Newhouse, and that the said sheriff had advertised the same for sale under said execution and was about to sell and dispose of the same at public sale thereunder. That said defendants, Schwed and Newhouse, were insolvent and had no other property in the said State of Missouri, except the goods and chattels levied upon and attached by said writs of attachment and said fraudulent execution. That said judgment was fraudulently confessed by said Schwed and Newhouse for the purpose of covering up the said property and defrauding the plaintiffs and other creditors of said Schwed and Newhouse out of their just demands, and that it was so confessed without any consideration, and was so confessed and rendered by said Circuit Court without any affidavit or statement of either Schwed or Newhouse or Heller filed in said court as required by law, showing in any way the facts out of which the said pretended indebtedness arose, and was and is irregular, erroneous and void. That the issuing of said execution and the threatened sale thereunder, was made and done by said defendants, Heller, and Schwed and Newhouse, with intent to defraud plaintiffs out of their just demands, and to transfer the ostensible ownership and possession of said property by the threatened sale thereunder to prevent plaintiff or any other creditors from reaching the same by process of law, and praying that said sale under such said fraudulent execution be enjoined, and said fraudulent judgment and execution be set aside and for other general relief.

That such proceedings were had in said cause, and that afterwards, to-wit: On the day of the same was duly removed by said plaintiffs, William Smith and Company and William C. Greene and Company, into this court and the same is now pending, at issue and undetermined herein.

And your orators show by the way of supplement, that after the institution of said suit by said plaintiffs, William Smith and Company, and William C. Greene and Company, your orators herein, The Seth Thomas Clock Company. E. N. Welch Manufacturing Company, and T. Quayle, being at that time creditors of Schwed and Newhouse, commenced proceedings, respectively, in said Jackson County Circuit Court, by attachment against said Schwed and Newhouse, for debts then owing them for goods sold and delivered, and that writs of attachment issued in said suits to defendant, O. P. W. Bailey, sheriff as aforesaid, and were levied upon the goods and chattels, herein before mentioned, of the said Schwed and Newhouse, and that under the said writs of attachment of your orators, William Smith and Company, and William C. Greene and Company, said property so attached as above described, was sold at public sale, and the gross proceeds of said sale was eighty-two hundred and fifty-three dollars ($8,253.00), and that this sum is now in the hands of said O. P. W. Bailey, as ex-sheriff of said Jackson county.

That afterwards, to-wit: At the April term, A. D. 1881, of said Jackson County Court, your orators, respectively, recovered judgments in said circuit court against Schwed and Newhouse in said suits by attachment as follows, to-wit:

William Smith and Company for the sum of forty-one hundred and

seventy-four and 38-100 dollars, William C. Greene and Company for the sum of eleven hundred and seven and 09-100 dollars, Seth Thomas Clock Company for the sum of five hundred and forty-one and 22-100 dollars, Seth Thomas Clock Company for the sum of nine hundred and seventy-seven 27-100 dollars, E. N. Welch Manufacturing Company for the sum of four hundred and fifty-five and 58-100 dollars, T. Quayle and Company for the sum of three hundred and fifty-six and 45-100 dollars, as will more fully appear by certified copies of said judgments herewith filed and made a part of the bill of complainants.

That said judgments are still due and unpaid, and that the indebtedness upon which they were rendered was due and owing prior to the fraudulent confession of judgment by said Schwed and Newhouse to H. Heller, as stated in said original petition.

That the respective judgments of your orators herein are liens upon the proceeds of said sale of the attached property of Schwed and Newhouse, according to the respective dates of the levy of the writs of attachment thereon, and that Schwed and Newhouse are insolvent and have no other property in this State or elsewhere that can be reached by process of law, and that executions on said judgments would be entirely unavailing to your orators herein. And your orators charge that the said judgments by confession in favor of defendant Heller, by said defendants, Schwed and Newhouse, in said circuit court of Jackson county, as stated and charged in the original petition of said William Smith and Company and William C. Greene and Company, was fraudulently made and contrived by said defendants, Schwed and Newhouse, and Heller, with the intent on the part of them, and each of them to cover up the property of the said Schwed and Newhouse so as to hinder, delay and defraud your orators, and other *bona fide* creditors of the said Schwed and Newhouse, out of their just demands.

That said defendants were not at the time of said fraudulent confession of judgment indebted to defendant Heller in the sum of ninety-five hundred and twelve and 50-100 dollars, or any other sum ; that said judgment was confessed without any adequate or valuable consideration therefor and was confessed and rendered by said circuit court without any affidavit or statement of said defendants, Schwed and Newhouse of either of them, or of defendant Heller, filed in said circuit court, as required by law, showing the facts out of which said pretended indebtedness arose, and was and is irregular, fraudulent and void, nnd the issuance and levy of said execution on, and the threatened sale of said property by said defendant O. P. W. Bailey, was fraudulently made and contrived by said defendants, Schwed and Newhouse and Heller, for the purpose of defrauding your orators and the other creditors of said Schwed and Newhouse out of their just demands, and of transfering the ostensible ownership of said property to said defendant Heller, by said sale, so as to prevent your orators from levying upon or selling said property, or any part thereof, or reaching the same by process of law.

To the end, therefore, that all your orators may have the full benefit of the original suit and proceedings herein against said defendants, and may have the same relief against the defendants as said William Smith and Company and William C. Greene and Company might or could have been had in said original suit, your orators pray that said judgment by confession and the execution thereunder, and the levy thereof, on said property of defendants, Schwed and Newhouse, be set aside as fraudulent and void.

That the said O. P. W. Bailey be required to bring the proceeds of the sale of said property into the registry of this court, and that on the final

hearing of this cause the said fund be applied and under the order and decree of this court to the payment of the judgments of your orators herein, according to their respective liens and priorities on said fund, and that said defendants, Heller, Schwed and Newhouse, their agents and attorneys, be forever enjoined and restrained from claiming said fund, or in any manner interferring with the same, and for such other and proper relief as may be right and equitable in the premises.

BOTSFORD & WILLIAMS, and
SCARRITT & RIGGINS,
Attorneys for Complainants.

And afterwards, to-wit: At the said October term, A. D. 1881, the defendants file demurrer to supplemental bill, which is in words and form as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of the State of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
against
EDWARD SCHWED *et al.*
Defendants.

The demurrer of the defendants, H. Heller, Edward Schwed and Simon H. Newhouse, and O. P. W. Bailey, to the supplemental bill of complaint of William Smith, John Smith, O. C. Lenz, William C. Greene, B. W. Greene, George D. Briggs, the Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quayle.

The defendants, H. Heller, Edward Schwed, S. H. Newhouse and O. P. W. Bailey, by protestation, not confessing any of the matters in and by said supplemental bill complained of to be true in manner and form as therein set forth, say: That they are advised that there is no matter or thing in said supplemental bill, good and sufficient in law, to call these defendants to account in this honorable court for the same; but that there is good cause of demurrer thereto, and they do demur accordingly; and for causes of demurrer, say:

First. This court has no jurisdiction to entertain said supplemental bill on behalf of the complainants, the Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quayle.

Second. This is a proceeding commenced under and solely by virtue of the provisions of the revised statutes of Missouri, to set aside a judgment of a state court, and such proceedings must be begun in the State court.

Third. The complainants, the Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quayle have not commenced such proceedings in the State court.

Fourth. This court has no jurisdiction to grant the relief prayed for.

Fifth. This court has no jurisdiction to avoid or enjoin the judgments or process of a state court, except in removal causes if at all.

Sixth. There is nothing alleged in said supplemental bill on behalf of the original plaintiffs which cannot quite as well be adjudicated under the allegations of the original petition in this cause.

Seventh. The said supplemental bill, so far as the complainants, the Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quayle are concerned, in case the same were true, contains no

matter of equity whatever, whereon this court can ground any decree or give said complainants any relief as against these defendants.

Wherefore, and for divers other reasons in said supplemental bill contained and appearing on the face thereof, these defendants do demur thereto, and humbly crave the judgment of this honorable court whether they are compellable or ought to make any answer thereunto otherwise than as aforesaid, and these defendants humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

TICHENOR & WARNER,
BRYANT & HOLMES,
For Defendants.

Affidavit of defendant waived.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

BRYANT & HOLMES,
TICHENOR & WARNER,
Defendants' Counsel.

Dan'l B. Holmes makes oath, and says, that he is agent and attorney for defendants, and that the foregoing demurrer is not interposed for delay.

DAN'L B. HOLMES.

Subscribed and sworn to before me this September fifteenth, 1881.

WARREN WATSON,
Com. U. S. Cir. Ct. West. Dist. Mo.

And afterwards, to-wit: At the October term, A. D. 1881, the following entry appears on the order book, to-wit:

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

Comes now defendant Heller and files his demurrer and answer to the original bill, and also comes defendants, Schwed and Newhouse, and file answer to same.

And said demurrer and answer of said defendant Heller is in words and form as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
vs.
EDWARD SCHWED *et al.*
Defendants.

The demurrer of the defendant H. Heller to part and his answer to the residue of the original bill of complaint of William Smith, John Smith, O. C. Lenz, William C. Greene, B. W. Greene and George D. Briggs.

The defendant H. Heller, by protestation, not confessing any of the matters in and by that part of said bill complained of to be true in manner and form as the same are set forth which alleges that the judgment complained of in favor of this defendant, was confessed and rendered by the Jackson County Circuit Court without any affidavit or statement of this defendant or the defendants, Schwed and Newhouse, filed in said Jackson

County Circuit Court as required by law, showing in any wise the facts out of which the indebtedness from said defendants, Schwed and Newhouse, to this defendant arose, and that said judgment was and is irregular and erroneous; says, that he is advised that there is no matter or thing in said part of said bill good and sufficient in law to call this defendant to account in this honorable court for the same; but that there is good cause of demurrer thereunto and he does demur accordingly, and for cause of demurrer says, that said part of said bill is a supplementary proceeding so connected with the original suit in which said judgment was confessed and rendered as to form and incident to it, and substantially a continuation of it; and the said judgment having been confessed and rendered in a State court, this court cannot properly entertain jurisdiction of that part of the case, and that said part of said bill in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainants any relief as against this defendant.

Wherefore, and for divers other errors in said part of said bill contained and appearing on the face thereof, this defendant does demur thereto and humbly craves the judgment of this honorable court, whether he is compellable or ought to make any answer thereunto otherwise than as aforesaid.

And this defendant humbly prays to be hence dismissed with his costs and charges, in this behalf most wrongfully sustained.

And as to the residue of said bill this defendant, not waiving his demurrer, but relying thereon, and saving and reserving to himself now, and at all times hereafter, all manner of benefit and exception which can be had to the residue of said bill, for answer thereto or to so much thereof as this defendant is advised is in any wise material or necessary for him to answer unto, answers and says:

He admits that plaintiffs were and are partners as alleged in said bill; that defendants, Schwed and Newhouse, were co-partners at the times and as alleged in said bill, and that defendant Bailey was sheriff of Jackson county as alleged in said bill.

He admits that the defendants, Schwed and Newhouse, were and are indebted to the complainants at the times, in the manner and in the sums as alleged in said bill; that complainants commenced actions by attachment against said defendants, Schwed and Newhouse, at the times, in the manner and on the amounts alleged in said bill; and he admits the filing of petitions, affidavits and bonds, and the issue, delivery and levy of writs of attachment as alleged in said bill, and that the property so levied on embraced the entire stock of watches, jewelry, clocks, watchmaker's tools and watch and clock materials, in the store-room formerly occupied by said Schwed and Newhouse, at number five hundred and twenty Delaware street, Kansas City, Jackson county, Missouri.

He admits that on January twenty-sixth, 1880, prior to the commencement of said suits by attachment and the levy of said writs of attachment on said property of defendants, Schwed and Newhouse, the said defendants, Edward Schwed and Simon H. Newhouse, authorized a judgment to be entered on confession in the said Circuit Court of Jackson county, Missouri, at Kansas City, against them in favor of this defendant for nine thousand five hundred and twelve dollars and fifty cents, with legal interest thereon from said January twenty-sixth, 1880, for an indebtedness owing to this defendant by said defendants, Schwed and Newhouse, upon a note or bond of said Schwed and Newhouse in the sum of nine thousand dollars, dated at Pittsburgh, February eighth, 1879, and payable one day after date to the order of this defendant, and that on said January twenty-

sixth, 1880, judgment was entered on said confession of said Schwed and Newhouse in said circuit court of Jackson county in favor of this defendant and against said Schwed and Newhouse in the said sum of $9,512.50-100 for debt with interest from said date thereon at the rate of six per centum per annum, and for costs and charges of this defendant in that behalf expended, and that this defendant, in said judgment, had lieve to sue out execution forthwith.

He admits that an execution was issued on said judgment and directed and delivered to the defendant Bailey and levied at the time, in the manner and on the property alleged in the said bill. And he admits the taking and holding possession of said property by the defendant Bailey and the advertisement of sale at the time, by the authority, in the manner and for the purpose alleged in the bill. But this defendant denies that said property so levied on as aforesaid was of no greater value than six thousand dollars.

This defendant denies that said judgment in his favor was fraudulently confessed by said defendants, Edward Schwed and Simon H. Newhouse, or either of them, or for the purpose of covering up the property of said defendants, Schwed and Newhouse, or defrauding said plaintiffs in the collection of their demands, and he denies that the said defendants, Edward Schwed and Simon H. Newhouse, were not indebted to this defendant in said sum of nine thousand dollars at the time of the said confession of said judgment in his favor as aforesaid, or that said judgment was confessed without any consideration; and he denies that the issue of said execution or the threatened sale of said property was to be made with the intention on the part of this defendant or of said Schwed or said Newhouse of defrauding the plaintiffs, or either of them, out of their demands or of transferring the ostensible ownership or possession of said property to this defendant by said sale, so as to prevent plaintiffs, or either of them, or any other creditor, from levying upon or selling any part or all thereof or of reaching the same by process of law.

He admits that the property levied on and held by defendant Bailey, is the same property attached in said actions; but he denies that said property was at the times of the levy of said writs of attachment, or at any time thereafter, the property or effects of said defendants, Schwed and Newhouse, except so far as there might be an excess of the payment and satisfaction of this defendant's said judgment and execution. And he denies that the said property was the entire property owned by said defendants, Schwed and Newhouse within the State of Missouri, or that said defendants, Schwed and Newhouse, had no other property whatsoever of any kind within said State which could be reached by process of law, or that they were at the date of issuing of said attachments or are now hopelessly insolvent or had then or now have absconded or absented themselves from their usual place of abode in this State so that the ordinary or usual process of law could not be served upon them.

And this defendant further answering, says:

That during the years 1872, 1873, 1874, 1875, 1876, 1877, 1878 and 1879 he was in the habit of lending large sums of money to the said firm or co-partnership of Schwed and Newhouse for which they paid or agreed to pay this defendant interest; that whenever he made a loan to said defendants, Schwed and Newhouse, he took from them their promissory note evidencing the amount of such loan, and such notes, if not paid at maturity, were generally from time to time renewed; and that

the aggregate amount of such notes and renewals owned and held at any given time by this defendant showed truly and accurately the sum of money at such time due and owing to this defendant at such time by said firm of Schwed & Newhouse; that on or about February 4th, 1879, the balance due this defendant from Schwed & Newhouse on account of the loans so made to them by this defendant before that time, was $6000.00, and this defendant on said February 4th, 1879, held and owned the promissory notes of said Schwed & Newhouse, aggregating said sum of $6000.00; that on or about said February 4th, 1879, the defendants, Schwed & Newhouse, delivered to this defendant their promissory note bearing that date for the sum of $3000.00 and requested of this defendant an additional loan for that amount; that this defendant declined to comply with said request except upon the condition that said defendants, Schwed & Newhouse, would execute and deliver to him, by way of security, their judgment note for the whole amount of money that would then be owing by said Schwed & & Newhouse to this defendant, and on or about February 8th, 1879, the said Schwed & Newhouse made, executed and delivered to this defendant their judgment note of that date by way of such security for the sum of $9000.00, and which is the same judgment note upon which the judgment referred to and described in complainants' bill was confessed in favor of this defendant by said Schwed & Newhouse, and on February 11, 1879, and February 12, 1879, this defendant paid to said Schwed & Newhouse the aggregate sum of $2950.43, being the amount of said promissory note of February 4, 1879, after deducting the sum of $49.57 for interest. And this defendant further says that he is unable to give an exact description of each note for which said $9000.00 judgment note was given as security, for the reason that when said indebtedness of Schwed & Newhouse to him represented by said notes became merged in the said confessed judgment complained of in complainants' bill, he surrendered to said Schwed & Newhonse all of their said prommissory notes, except a renewal of said note for $3000.00 of February 4, 1879, which was inadvertently retained and which renewal is dated November 4, 1879, and is herewith filed, marked Exhibit A, and made a part of this answer.

And this defendant, further answering, says that said judgment confessed by said defendants, Edward Schwed and Simon H. Newhouse, in favor of this defendant was confessed in good faith for the amount of a debt justly due and owing by said Schwed & Newhouse to this defendant.

All which matters and things this defendant is ready to aver and prove as this court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

On this 4th day of October, A. D. 1881, before me personally appeared H. Heller, the above named defendant, and made oath that he has read the above demurrer and answer subscribed by him and knows the contents thereof, that said demurrer is not interposed for delay, and that said answer is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

HERMAN HELLER.

Sworn and subscribed to before me this fourth day of October, 1881, by H. Heller.

BENJ. HELLLER,
Notary Public.

[SEAL.]

TICHENOR & WARNER,
BRYANT & HOLMES,
For Defendants.

Oath of defendant and affiants waived.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

TICHENOR & WARNER,
BRYANT & HOLMES,
Counsel for defendant Heller.

(To this answer is attached the following note :)

EXHIBIT "A."

$3,000.00 Pittsburgh, November 4, 1879.

Three months after date we promise to pay to the order of H. Heller three thousand dollars, at 314 Market Street, Philadelphia, Pa., without defalcation, for value received.

SCHWED & NEWHOUSE.

No. 56. Due February 4 – 7.

Endorsed on the back is the following :

Schwed & Newhouse, 3,000 Febry 4–7.
Protest waived Feby 7th, 1880. H. HELLER.

H. HELLER.

And said answer of said defendants, Schwed & Newhouse, is in words and form as follows, to-wit :

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
vs.
EDWARD SCHWED *et al.*
Defendants.

The joint and several disclaimer and answer of the defendants, Edward Schwed and Simon H. Newhouse, to the bill of complaint of William Smith, John Smith, O. C. Lenz, William C. Greene, B. W. Greene and George D. Briggs.

These defendants, Edward Schwed and Simon H. Newhouse, saving and reserving to themselves, now and at all times hereafter, all manner of advantage and benefit of exception and otherwise that can or may be had or taken to the many untruths, uncertainties and imperfections in the said complainants' bill of complaint contained, for answer thereto or to so much or such part thereof as is material for these defendants to make answer unto, they answer and say, that they do fully and absolutely disclaim all manner of interest in the matters, property and things in controversy in this suit.

They admit that cmplaiants were and are partners as alleged in

said bill; that these defendants were co-partners at the times and as alleged in said bill, and that defendant Bailey was sheriff of Jackson county as alleged in said bill.

They admit that these defendants were and are indebted to the complainants at the times, in the manner and in the sums as alleged in said bill; that complainants commenced actions by attachment against these defendants at the times, in the manner and on the amounts alleged in said bill. And they admit the filing of petitions, affidavits and bonds and the issue, delivery and levy of writs of attachment as alleged in said bill, and that the property so levied on embraced the entire stock of watches, jewelry, clocks, watchmaker's tools, watch and clock materials in the storeroom formerly occupied by these defendants at number five hundred and twenty Delaware Street, Kansas City, Jackson county, Missouri.

They admit that on January 26, 1880, prior to the commencement of said suits by attachment and to the levying of said writs of attachment on said property of these defendants, they authorized a judgment to be entered on confession in the said circuit court of Jackson county, Missouri, at Kansas City, against them in favor of defendant, H. Heller, for $9512.50 with legal interest thereon from said January 26, 1880, for an indebtedness owing to said defendant, H. Heller, by these defendants upon a note or bond of these defendants in the sum of $9.000.00 dated at Pittsburgh, February 8, 1879, and payable one day after date to the defendant Heller, and that on said January 26, 1880, judgment was entered on said confession of these defendants in said circuit court of Jackson county, in favor of defendant Heller, and against these defendants in the sum of $9512.50 for debt with interest from said date thereon at the rate of six per cent. per annum and for cost and charges of defendant Heller in that behalf expended, and that defendant Heller, in said judgment, had leave to sue out execution thereon forthwith.

They admit that an execution was issued on said judgment, directed and delivered to defendant Bailey and levied at the time, in the manner, and on the property as alleged in said bill; and they admit the taking and the holding possession of said property by the defendant Bailey and the advertisement of sale at the time, by the authority, in the manner and for the purpose alleged in the bill. But these defendants deny that said property so levied upon as aforesaid was of no greater value than six thousand dollars. These defendants deny that said judgment in favor of defendant Heller was fraudulently confessed by them or either of them or for the purpose of covering up their property or defending the said plaintiffs in the collection of their demands; and they deny that they were not indebted to the defendant Heller in the sum of $9,000.00 at the time of the confession of said judgment in his favor as aforesaid or that said judgment was confessed without and consideration; and they deny that the issue of said execution or the threatened sale of said property was to be made with the intention on the part of defendant Heller, or of these defendants, or either of them, of defrauding the plaintiffs or either of them out of their demands, or of transferring the ostensible ownership or possession of said property to defendant Heller by said sale so as to prevent plaintiffs or either of them or any other creditors from levying upon or selling any part or all thereof or of reaching the same by process of law.

They admit that the property levied upon and held by defendant Bailey is the same property attached in said actions; but they deny that said property was at the time of the levy of said writs of attachment, or at any time thereafter, the property or effects of these defendants, except so far as there might be an excess of the payment and satisfaction of the

defendant Heller's said judgment and execution. And they deny that the said property was the entire property owned by these defendants within the state of Missouri, or that these defendants had no other property whatsoever of any kind within said state which could be reached by process of law, or that they had then or at any time absconded or absented themselves from their usual place of abode in this state, so that the ordinary or usual process of law could not be served upon them, the said Edward Schwed never having at any time had a place of abode in this state and the said Simon H. Newhouse being then at his usual place of abode in Kansas City, Jackson county, Missouri, where the usual and ordinary process of law could easily and conveniently be served upon him.

And these defendants further answering, say :

That during the years 1872, 1873, 1874, 1875, 1876, 1877, 1878 and 1879, they were in the habit of borrowing large sums of money from the defendant Heller, and that the following is an account of each of said loans made prior to February fourth, 1879, these defendants in each instance executing a note or notes to said Heller for the amount of such loans :

DATE OF NOTES.	DATES AND AMOUNT MONEY ACTUALLY RECEIVED AND INTEREST DEDUCTED.	AMOUNT OF LOAN.
Feb. 13, '72.	February 13, 1872, $1,000	$1,000
Oct. 8, '72.	October 8, 1872, $2,000	2,000
Jan. 27, '73.	January 30, 1873, $979.24, being $1,000, after deducting $20.76 for interest	1,000
Feb. 5, '73.	February 5, 1873, $970, being $1,000, after deducting $30 for interest	1,000
May 9, '73.	May 12, 1873, $1,000 and May 14, 1873, $950, being $2,000 after deducting $50 interest	2,000
July 22, '73.	July 26, 1873, $1,950, being $2,000, after deducting $50 for interest	2,000
Jan. 26, '74.	January 27, 1874, $1,950, being $2,000, after deducting $50 for interest	2,000
May 16, '74.	May 16, 1874, $1,950, being $2,000, after deducting $50 for interest	2,000
Sept. 9, '74.	September 9, 1874, $960.67, being $1,000, after de- $39.33 for interest	1,000
Feb. 12, '75.	February 12, 1875, $1,000	1,000
Feb. 13, '75.	February 13, 1875, $975, being $1,000 after deducting $25 for interest	1,000
March 10,'75.	March 10, 1875, $1,500, and March 13, 1875, $441.40, being $2,000, after deducting $58.60 for interest	2,000
May 17, '75.	May 17, 1875, $985, being $1,000, after deducting $15 for interest	1,000
May 22, '76.	May 24, 1876, $1,454.84, being $1,500, after deducting $45.16 for interest	1,500
April 18, '77.	April 19, 1877, $595	595
Aug. 27, '77.	September 11, 1877, $1,468.25, being $1,500, after deducting $31.75 for interest	1,500
Feb. 18, '78.	March 1, 1878, $972.62, being $1,000, after deducting $27.38 for interest	1,000
April 23, '78.	April 26, 1878, $1,939.17, being $2,000, after deducting $60.83 for interest	2,000
Aug. 10, '78.	August 10, 1878, $450	450
	Total amount of loans from Heller from February 13, 1872, to February 13, 1879	$26,045

And these defendants further answering, say that prior to February 4, 1879, they had paid to the said Heller the aggregate sum of $20,045.00 and no more on account of the principal of said loans, leaving a balance due said Heller from these defendants on said February 4th, 1879, of $6000.00, said balance being then and there evidenced by notes of these defendants for that amount in favor of said Heller, and held and owned by him: That on said February 4th, 1879, these defendants drew up their note of that date for $3000.00 in favor of said Heller and requested of him a further and additional loan for that amount, which said Heller declined to do except upon condition of these defendants securing to said Heller the said sum as well as the said $6000.00 already owing to him, and accordingly these defendants on or about February 8, 1879, made, executed and delivered to said Heller, by way of such security, their judgment note bearing said date, for the sum of $9000.00, and said Heller thereupon turned over to these defendants on February 11, 1879, the sum of $500.00 and on February 13, 1879, the further sum of $2450.47 making in all said sum of $3000.00 after deducting $49.53 for interest; neither said judgment note nor the said indebtedness which it was made to secure has ever been paid either in whole or in part, and said judgment note is the same note or bond on which the judgment referred to in the bill was confessed in favor of the said defendant Heller.

And these defendants further answering say, that said judgment so confessed by these defendants in favor of said Heller, was confessed in good faith for the amount of said debt which was and is justly due and owing by these defendants to said Heller.

All which matters and things these defendants are ready to aver and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD SCHWED,
SIMON H. NEWHOUSE.

TICHENOR & WARNER,
BRYANT & HOLMES,
For Defendants.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

On this sixth day of October, 1881, before me personally appeared Edward Schwed and Simon H. Newhouse, the above named defendants, and severally made oath, that they have read the above answer and disclaimer subscribed by them and know the contents thereof; that said answer and disclaimer are true of their own knowledge, except as to the matters which are therein stated to be on their information and belief, and that as to those matters they believe the same to be true.

ELMER L. FORD,
[SEAL.] Notary Public, Kings County.
Certificate on file in New York County.

And afterwards, to-wit: At the October term, A. D. 1881, of said court, the following entry appears on the order book, of date October 18th, to-wit:

WILLIAM SMITH *et al.* }
against
EDWARD SCHWED *et al.* }

This day come complainants, by their solicitors, and file replication to defendants' amended answer.

And the said replication is in words and form as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri. October term, 1881. In Equity.

WILLIAM SMITH, *et al.*
Plaintiffs,
against
EDWARD SCHWED and SIMON H. NEWHOUSE, HERMAN HELLER, and O. P. W. BAILEY,
Defendants.

The replication of plaintiffs in the above entitled cause to the separate amended answers of said defendants, Schwed & Newhouse and Heller, filed October seventeenth, 1881. These repliants saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith: that they will aver and prove their said bill to be true, certain and sufficient in law to be answered unto; and that the said answers of the said defendants are uncertain, untrue and unto by these repliants; without this, that any other or thing whatsover in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all of which matters and things these repliants are, and will be ready to aver and prove, as this honorable court shall direct, and humbly pray, as and by their said bill they have already prayed.

BOTSFORD & WILLIAMS, and
SCARRITT & RIGGINS,
Plaintiffs' Solicitors.

And afterwards, to-wit: At said October term, A. D. 1881, of said court, the following entry appears on the order book, of date November 1st, to-wit:

WILLIAM SMITH *et al.*
against
EDWARD SCHWED *et al.*

This day come the parties, by their respective solicitors, and the demurrer of the defendants to part of the original bill and to the supplemental bill being regularly called for hearing, the same is argued by counsel and submitted; whereupon the court doth order that said demurrer to part of original bill be sustained and that the demurrer to the supplemental bill be overruled. Thereupon defendants file answers and complainants file reply in the matter of the supplemental bill; and this cause being regularly called for hearing on the merits the same is heard by the court and submitted.

And which answer to supplemental bill is in words and form as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
Complainants,
against
EDWARD SCHWED *et al.*
Defendants.

The joint and several answers of Edward Schwed, Simon H. Newhouse, H. Heller and O. P. W. Bailey, the defendants to the supplemental bill of complaint of the complainants Wm. Smith, John Smith, O. C. Lenz, Wm. C. Greene, B. W. Greene, George D. Briggs, the Seth Thomas Clock Company, E. N. Welch Manufacturing Company, and Thomas Quayle.

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said supplemental bill contained, for answer thereto or unto so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

First. That it is true that after the institution of this suit the complainants the Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quayle commenced proceedings respectively in the Jackson county circuit court by attachment against defendants Schwed & Newhouse; that writs of attachment issued in said suits to defendant Bailey, sheriff as aforesaid, and were levied upon the goods and chattels in the complainants' bill and supplemental bill mentioned; that the property so attached was sold at public sale and the gross proceeds of said sale was $8253.00 and that said sum is now in the hands of defendant Bailey, as ex-sheriff as aforesaid; and that at the April term A. D. 1881, of said Jackson county circuit court the complainants' respectively recovered judgments in said court against defendants Schwed & Newhouse in said suits by attachment for the several amounts in said supplemental bill of complaint mentioned.

And these defendants further answering deny that said judgment by confession in favor of defendant Heller, by said defendants, Schwed & Newhouse, in said circuit court of Jackson county was fraudulently made or contrived with any intent to cover up the property of said Schwed & Newhouse, so as to hinder or delay or defraud the complainants or either of them or any body else whomsoever; deny that said defendants were not at the time of said confession of judgment indebted to defendant Heller in the said sum of $9512.50; deny that said judgment was confessed without any adequate or valuable consideration therefor or that it was confessed or rendered without any affidavit or statement of the defendants Schwed & Newhouse, or defendant Heller filed in said circuit court as required by law, showing the facts out of which the indebtedness arose or that said confession of judgment was or is irregular, fraudulent or void, and deny that the issuance or levy of said execution or the threatened sale of said property by defendant Bailey was fraudulently made or contrived for the purpose of defrauding the complainants or either of them or any other person whomsoever or of transferring the ostensible ownership of said property to defendant Heller so as to prevent the complainants or either of them or any other person whomsoever from levying upon or selling said property or any part thereof or reaching the same by process of law.

And these defendants further answering say that said judgment was confessed by defendants, Schwed & Newhouse, in favor of defendant Heller for the amount of a debt justly due and owing from them to said Heller for the *bona fide* purpose of enabling the said Heller to collect his said debt, and for no other purpose whatever. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they or either of them are by the said supplemental bill charged, without this, that there is any other matter, cause or thing in the complainants'

supplemental bill of complaint contained, material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD SCHWED,
SIMON H. NEWHOUSE,
HERMAN HELLER,
O. P. W. BAILEY.

BRYANT & HOLMES,
Defendants' Solicitors.

TICHENOR & WARNER,
Of Counsel.

And which replication to answer to supplemental bill of complaint is in words and form as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
vs.
EDWARD SCHWED *et al.*
Defendants.

The replication of William Smith, John Smith, and O. C. Lenz, William C. Greene, B. W. Greene, and George D. Briggs, the Seth Thomas Clock Company, E. N. Welch Manufacturing Company, and Thomas Quayle, complainants to the joint and several answers of Edward Schwed, Simon H. Newhouse, H. Heller and O. P. W. Bailey, defendants.

These repliants saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say: That they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all of which matters and things these repliants are, and will be ready to aver and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

BOTSFORD & WILLIAMS, and
SCARRITT & RIGGINS,
For Complainants.

And afterwards, to-wit: At said October term, A. D. 1881, of said court, the following entry appears on the order book, of date November 5th, to-wit:

WILLIAM SMITH, JOHN SMITH, O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE, GEORGE D. BRIGGS, the SETH THOMAS CLOCK COMPANY, and the E. N. WELCH MANUFACTURING COMPANY and THOMAS QUAYLE,

Plaintiffs,

against

EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY,

Defendants.

This cause came on to be heard on the proofs and pleadings at this term and was argued by counsel for the respective parties, and thereupon upon consideration thereof, it was ordered, adjudged and decreed as follows:

It is adjudged that the judgment of the circuit court of Jackson county, in the state of Missouri, which was confessed therein January twenty-sixth, A. D. 1880, by the defendants, Edward Schwed and Simon H. Newhouse, in favor of defendant Heller and against said Edward Schwed and Simon H. Newhouse for the sum of nine thousand five hundred and twelve 50–100, ($9,512.50) dollars, together with the execution issued thereon and delivered to defendant Bailey as sheriff of said county, and together with the levy of said execution, by said sheriff, upon the stock of goods of said defendants, Schwed & Newhouse, as wholesale jewelers at Kansas City, in said county, and together with all proceedings had on said judgment so confessed, were made, contrived, rendered, issued, levied and had on the part of defendants, Edward Schwed, Simon H. Newhouse, and Herman Heller, with intent on part of said defendants, Edward Schwed, Simon H. Newhouse, and Herman Heller, to hinder, delay and defraud the creditors of said defendants, Schwed & Newhouse, and were and are void as against the plaintiffs in this suit, and that said judgment, execution, levy, and proceedings and the lien of said execution and levy on said stock of goods, as to said plaintiffs, and each of them, be and the same are hereby cancelled, annulled, set aside and decreed to be absolutely null and void.

It is further adjudged that the injunction herein before granted against the defendants be and the same is hereby made perpetual. It is further adjudged that the plaintiffs have and recover of and against the defendants Edward Schwed, Simon H. Newhouse and Herman Heller their costs in this behalf laid out and expended and that they have execution therefor.

And thereupon defendants pray for an order allowing them an appeal to the supreme court of the United States, and it is ordered that the same be allowed and that defendants give an appeal bond in the sum of $2,000, to be approved by one of the judges of this court.

GEO. W. M'CRARY,
Circuit Judge.

And the testimony adduced on either side to support the issues is as follows, to-wit:

COMPLAINANTS' TESTIMONY.

In the United States Circuit Court for the Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
against
EDWARD SCHWED SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY,
Defendants.

UNITED STATES OF AMERICA, } ss.
STATE OF PENNSYLVANIA. }

Be it remembered that on this second day of February, A. D., 1881, I, Frank W. Hughey, a notary public of the city of Pittsburgh, duly appointed, commissioned and qualified as such did under and by virtue of the several acts of congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the circuit and district courts of the United States, cause to come before me at the office of George W. DeCamp, Number 160 Fourth avenue, Pittsburgh, Allegheny county, Pennsylvania, and between the hours of eight o'clock a. m. and six o'clock, p. m. of said day, the following persons, to-wit: Samuel Parker, Vincent Stevens, Edward Schwed and Josiah Cohen, to be examined as witnesses in a cause pending in the circuit court of the United States for the Western Division of the Western District of Missouri, wherein William Smith, *et al.* are plaintiffs, and Edward Schwed *et al.* are defendants.

Col. James S. Botsford and T. S. Parker, Esqrs., appear for the plaintiffs, and Mr. Holmes, and Josiah Cohen, Esq., for the defendants.

Pursuant to an agreement of the aboved named attorneys, I adjourn the taking of said deposition until Thursday, February third, A. D. 1881, there to be continued, at the place and between the hours mentioned in annexed notice.

FRANK W. HUGHEY,
Notary Public.

Pursuant to adjournment, on this third day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of George W. DeCamp, number 160 Fourth avenue, Pittsburgh, Pennsylvania, I continued the taking of said depositions, as follows:

And the said Samuel Parker, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Q. What is your name and place of residence?
A. Samuel Parker; I reside in Allegheny City.
Q. Were you present at an execution sale of the stock of goods of Schwed & Newhouse on an execution in favor of H. Heller?
A. I was.

Q. When and where was said sale had?

A. On the third of February, 1880, at the store of Schwed & Newhouse, on the corner of Fifth avenue and Wood streets, second story.

Q. What connection did you have with said sale?

A. I clerked for the sheriff.

Q. In clerking for the sheriff, what do you do?

A. I take down the items and the names of the parties that buy and the price of the items sold.

Q. What did you take down those items in?

A. In a blank book furnished for that purpose by the sheriff.

Q. Have you that book at present with you?

A. I have, sir.

Q. When did you make the entry of the items then sold?

A. At the time of the sale, and as each artitcle was put up and sold I entered it on the book.

It is agreed by the counsel herein, that all objections to the competency, relevancy or legality of testimony herein may be made at the hearing of this cause without being noted or saved at the time of the giving of the testimony of these depositions.

Q. Please state what the items in the left-hand marginal column of this account of sale express?

A. The number of articles that were put up for sale; the first item, "282" shows that that was the number of rings in the item set opposite, and so on throughout the entire account.

Q. Please state what the column commencing with the words "silver rings per half dozen," contains?

A. The names of the articles offered and sold, and also indicates the size of the lots in which they were put up.

Q. What does the column of the account commencing with the word "Frempton," contain?

A. The names of the parties who purchased the particular goods set opposite their names.

Q. When the capital letter "P" appears in said column, what is meant by said letter?

A. Plaintiff; that is, that the plaintiff purchased the property set opposite said letter "P."

Q. What does the column commencing with the figures "50" contain; please explain fully?

A. The price of each quantity put up. For instance, in the first item, 282 rings which we sold in quantities of one-half dozen to Mr. Frempton for fifty cents per one-half dozen, and the whole were sold for $23.50; this explains the entire column commencing with the figures "50."

Q. When in said column commencing with the figures "50" there is an absence of figures opposite items sold, were those items sold in bulk respectively, as entered on the book?

A. Yes; they were sold as entered on the book, in the smallest lots we could get a bid for.

Q. Please state what the column commencing with the figures $23.50 contains?

A. The amount that the articles brought that were offered at that time.

Q. What does the word cash in the column of purchasers mean, and why was the name of the purchaser of the items set opposite the word cash not entered?

A. They paid the money for the article and took it away, and we did not ask the name.

Q. When the name of the plaintiff or some other person was entered as purchaser, was there no cash paid at the time?

A. Not at the time.

Q. To whom was the cash paid that was paid at the sale?

A. Paid to me.

Q. Was there any money paid to you after the sale on account of items purchased?

A. There was not.

Q. Then it is a fact is it, that all the cash received by you for articles sold was for items marked as items sold to cash?

A. Yes; except in the case of a few items for which I received the cash afterwards.

Q. Were the items bought by Frempton paid for to you?

A. Not to me.

Q. Were the items marked as sold to the plaintiff paid for to you?

A. No, sir.

Q. Were the items marked as sold to Gallagher paid to you?

A. No, sir.

Q. Were the items marked as sold to Cohen paid to you?

A. No; that was included in plaintiff's bill. Mr. Cohen was the plaintiff's attorney.

Q. Were the sales to Bruno, amounting to $1.35, paid for to you?

A. Yes, it was, to the best of my knowledge.

Q. Was the sale of one item to Myers, amounting to $3.00, paid to you?

A. It was.

Q. Was the item of $3.15 for goods sold to Kœrner paid to you?

A. It was.

Q. Were the two items of sales to Holmes, for one dollar each, paid to you?

A. They were.

Q. Were the four items marked sold to Kline, amounting to $24.65, paid for to you?

A. No. I think they were not paid for to me. After the sale was over these parties came to me. Gallagher, Frempton and Kline asked for the bills. I commenced to make them out and Mr. Cohen came to me and asked me to wait a few minutes and he might save me some trouble. He went then and had a conversation with these parties and came and told me that he had purchased the articles from them and he made out a couple of checks in my presence and gave them to these parties; he told me then to include them in plaintiff's bill.

Q. Did Mr. Cohen pay you any money on account of the items marked in the account as having been purchased by Gallagher, Frempton and Kline?

A. He did not.

Q. Did any other person pay you any money on account of those purchases?

A. They did not.

Q. Do you know for what amounts Cohen gave his checks to Gallager Kline, and Frempton?

A. Well, I don't exactly know. It was for their bargains. That is as I understood for the difference between what they gave for the goods and what he agreed to give them.

Q. Were the two items sold to Davis and Malone paid for?

A. I think they were; and as to the one item of two clocks sold to Shannon were also paid for as it appears on the books.

Q. Were any of these purchasers employed in the sheriff's office, if so please name which ones?

A. Shannon, Maloney, Holmes and Bruno were employed in the sheriff's office at the time of the sale.

Q. Do you recollect any of the persons who bought goods marked as sold to cash?

A. I do not.

Q. Was the money that was paid as costs in this case amounting to the sum of $322.50 paid to you?

A. It was not. I had nothing to do with that part of the business.

Q. Is this account of the sale of the stock of Schwed & Newhouse true and correct?

A. It is; this is the regular book of entry as made at the time of sale and as each item was sold.

Q. Will you please make a copy of said account and file it as an exhibit with your deposition in this case?

A. I will.

Said copy is here produced and marked Exhibit "A." Said copy is a true copy of said account as contained in said book of original entries.

CROSS-EXAMINATION BY DEFENDANT'S ATTORNEYS:

Q. Please state the aggregate amount purchased by employees of the Sheriff's office to whom you have referred.

A. About $5.45.

Q. Have you any personal knowledge how much money was paid the sheriff or any of his deputies by purchasers on account of the Schwed & Newhouse sale to which you have referred?

A. I know nothing about that.

Q. Have you had much experience in conducting or assisting at the conduct of sheriff's sales?

A. I have been over two years at it.

Q. State whether or not the Schwed & Newhouse sale was conducted in the usual manner of conducting such sales by the sheriff?

A. It was.

SAM. PARKER.

Sworn to and subscribed before me on the day, at the place and between the hours aforesaid.

Witness my hand and seal.

FRANK W. HUGHEY,
[SEAL.] Notary Public.

And the said Vincent Stevens, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Q. Please state your name and place of residence?

A. Vincent Stevens; reside in Pittsburgh.

Q. What official position did you hold in January and February, 1880?

A. Deputy sheriff of Allegheny county, Pennsylvania.

Q. Did you levy the execution in the case of H. Heller vs. Schwed & Newhouse?

A. I did make the levy on the stock of Schwed & Newhouse.

Q. Please give the items on which the levy was made?

A. Two safes and contents, large lot of clocks, lot of watch makers' tools, one desk, four tables, three chairs, lot of shelving, &c.

Q. Please state whether the description in the advertisement of sale was the same as in the levy attached to the writ of execution?

A. That I don't know; might have been some changes; I think it was about the same; might have been described as a lot of jewelry. Safes were locked and continued locked until day of sale. My recollection of it is that they were combination locks. I think Mr. Schwed opened the safes on the morning of the sale.

Q. Was any schedule or list of the goods made before the list made by the clerk, Mr. Parker, at the sale as testified to by him?

A. Not to my knowledge.

Q. Was there any other officer in the sheriff's office engaged in making the levy or making the sale except yourself?

A. None that I recollect of.

Q. Were the costs in this case paid to you or to the sheriff?

A. They were not paid to me.

CROSS-EXAMINATION BY MR. COHEN.

Q. Is it customary for the sheriff or his deputies to make an inventory or schedule of the goods levied on?

A. No, sir.

Q. Will you please state whether the articles sold at the sheriff's sale were sold promiscously or whether they were assorted previous to the morning of the sale and counted?

A. The goods were very nicely sorted and my recollection is that the watchman counted them as they were handed up for sale. The goods were all assorted as if the man paid strict attention to his business.

Q. Was the advertisement made in this case in the usual form made in all other cases in your sheriff's office?

A. It was.

RE-EXAMINATION BY MR. BOTSFORD.

Q. You say in your cross-examination that the goods were sorted prior to sale; please state whether this was done before the safe was opened that morning or afterwards?

A. I think the assortment was made before the levy was made; the safe was not opened from the time the levy was made until the morning of the sale.

Q. What was done with the goods the plaintiff bought?

A. I don't know to whom the goods were delivered.

Q. Were the goods as the sale proceeded taken away from the store-room, or were they left in the store-room, and if left in the store-room, where in the store-room were they left; I mean the goods bought by plaintiff by Galagher, Kline and Frempton?

A. They were left in the store-room. We had a canvas up in the room and they were left back of the canvas, away from the crowd.

Q. Were they put back into the safe?

A. I don't know; possibly some of them were put back into the safe.

Q. Did you or Mr. Parker remain there after the sale?

A. May have remained there an hour or two; my recollection of it is that the watchman was left in charge.

Q. What were the names of the two watchmen?

A. Charles Holmes and Bruno Fenzel, if there was two.

A. Are you certain that either of the watchmen or any watchman for the sheriff stayed there after the sale was concluded?

A. No, sir; I am not.

Q. Is it usual to keep a watchman over goods after they are sold?

A. Yes, sir; to keep possession until the accounts are settled.

Q. Were Schwed & Newhouse present at the sale, or either of them, and if they were present were they present during the entire sale or only a portion of it?

A. Mr. Schwed was present in the morning, and I don't know whether he remained all day or not; never saw Mr. Newhouse to my knowledge.

Q. Was Mr. Heller there?

A. Mr. Heller was there, or a gentleman Mr. Cohen introduced as Mr. Heller.

RE-CROSS EXAMINATION BY MR. COHEN.

Q. Do you wish to be understood that the sheriff, through his watchmen, delivered these goods to the purchasers especially to the plaintiff on the day the sale was completed?

A. No, sir. My recollection of it is they were delivered to him the next morning.

Q. In whose custody were the goods from the close of the sale to the time of delivery?

A. In the custody of the sheriff.

Q. Were the goods bought by the plaintiff separated from the body of the stock that was being sold and kept distinct from those of the other purchasers?

A. Yes, sir.

Q. Were they laid aside in a pile by themselves—each man's purchase?

A. Yes, sir; they were put by themselves so that they could be told from others, and the plaintiff's might have been put in the safe.

Q. You do not say or mean to say that the plaintiff's goods, as he bought them, were mixed with the goods of any other purchasers?

A. No, sir; I do not.

RE-DIRECT EXAMINATION BY MR. BOLSTORD.

Q. Were the goods that were sold at the sale for cash left in the store or were they taken away by the purchasers at the time?

A. I think they were taken out; handed right out over the counter to the—

Q. To whom were they handed out over the counter?

A. To the purchasers; when we sold an article for cash we handed it right over the counter to the purchaser.

Q. In your cross-examination you say that it is your recollection that the plaintiff's goods were delivered to him the next morning. Is it your recollection that they were delivered to him in person, or to Mr. Cohen, his attorney?

A. I think to Mr. Cohen.

VINCENT STEVENS.

Q. Did you or Mr. Parker remain there after the sale?

A. May have remained there an hour or two; my recollection of it is that the watchman was left in charge.

Q. What were the names of the two watchmen?

A. Charles Holmes and Bruno Fenzel, if there was two.

A. Are you certain that either of the watchmen or any watchman for the sheriff stayed there after the sale was concluded?

A. No, sir; I am not.

Q. Is it usual to keep a watchman over goods after they are sold?

A. Yes, sir; to keep possession until the accounts are settled.

Q. Were Schwed & Newhouse present at the sale, or either of them, and if they were present were they present during the entire sale or only a portion of it?

A. Mr. Schwed was present in the morning, and I don't know whether he remained all day or not; never saw Mr. Newhouse to my knowledge.

Q. Was Mr. Heller there?

A. Mr. Heller was there, or a gentleman Mr. Cohen introduced as Mr. Heller.

RE-CROSS EXAMINATION BY MR. COHEN.

Q. Do you wish to be understood that the sheriff, through his watchmen, delivered these goods to the purchasers especially to the plaintiff on the day the sale was completed?

A. No, sir. My recollection of it is they were delivered to him the next morning.

Q. In whose custody were the goods from the close of the sale to the time of delivery?

A. In the custody of the sheriff.

Q. Were the goods bought by the plaintiff separated from the body of the stock that was being sold and kept distinct from those of the other purchasers?

A. Yes, sir.

Q. Were they laid aside in a pile by themselves—each man's purchase?

A. Yes, sir; they were put by themselves so that they could be told from others, and the plaintiff's might have been put in the safe.

Q. You do not say or mean to say that the plaintiff's goods, as he bought them, were mixed with the goods of any other purchasers?

A. No, sir; I do not.

RE-DIRECT EXAMINATION BY MR. BOTSFORD.

Q. Were the goods that were sold at the sale for cash left in the store or were they taken away by the purchasers at the time?

A. I think they were taken out; handed right out over the counter to the—

Q. To whom were they handed out over the counter?

A. To the purchasers; when we sold an article for cash we handed it right over the counter to the purchaser.

Q. In your cross-examination you say that it is your recollection that the plaintiff's goods were delivered to him the next morning. Is it your recollection that they were delivered to him in person, or to Mr. Cohen, his attorney?

A. I think to Mr. Cohen.

VINCENT STEVENS.

Sworn to and subscribed before me, on the day, at the place and between the hours aforesaid.

Witness my hand and seal.

FRANK W. HUGHEY,

[SEAL.]

Notary Public.

And the said Edward Schwed, of lawful age, being by me cautioned and sworn to testify the whole truth and being carefully examined, deposeth and saith :

Q. What is your name, age and place of residence ?

A. Edward Schwed, am 49 years of age and reside in Allegheny City.

Q. Where were you engaged in business ?

A. In Pittsburgh.

Q. How long have you been engaged in business in Pittsburgh ?

A. Not quite twelve years.

Q. Have you been in business yourself or as a member of a firm, and if so of what firm ?

A. I was for two years of the firm of Zugsmith & Schwed, balance of time Schwed & Newhouse.

Q. Which two years of the twelve were you engaged as a member of the firm of Zugsmith & Schwed ?

A. From April 1869 to April 1871, and since then the firm has been Schwed & Newhouse.

Q. As a member of those firms, what business have you carried on during those twelve years ?

A. Jewelry business.

Q. Were you manufacturers of jewelry, or wholesale dealers, or retail dealers ?

A. Wholesale dealers during the whole twelve years.

Q. In what place was the business of Zugsmith & Schwed carried on ?

A. At 93 Wood street.

Q. At what place did Schwed & Newhouse commence to carry on business ?

A. At 41 old number, which is now 65 Fifth aveuue.

Q. How long did Schwed & Newhouse continue to do business at that stand ?

A. Until we were closed out by the sheriff.

Q. Where have you done business since that time ?

A. At the same place; as agents.

Q. Where did you do business before coming to Pittsburgh ?

A. Immediately before coming to Pittsburgh I was clerking in New York with H. G. Boree & Co.

Q. In what business was that firm engaged ?

A. Importers of watches.

Q. How long were you clerk for them ?

A. I was a year before I came here.

Q. What business were you engaged in before you were a clerk ?

A. Wholesale jewelry business, in New York, as a member of the firm of Strauss & Schwed.

Q. How long did that firm exist ?

A. Two years.

Q. Did you or Mr. Parker remain there after the sale?

A. May have remained there an hour or two; my recollection of it is that the watchman was left in charge.

Q. What were the names of the two watchmen?

A. Charles Holmes and Bruno Fenzel, if there was two.

A. Are you certain that either of the watchmen or any watchman for the sheriff stayed there after the sale was concluded?

A. No, sir; I am not.

Q. Is it usual to keep a watchman over goods after they are sold?

A. Yes, sir; to keep possession until the accounts are settled.

Q. Were Schwed & Newhouse present at the sale, or either of them, and if they were present were they present during the entire sale or only a portion of it?

A. Mr. Schwed was present in the morning, and I don't know whether he remained all day or not; never saw Mr. Newhouse to my knowledge.

Q. Was Mr. Heller there?

A. Mr. Heller was there, or a gentleman Mr. Cohen introduced as Mr. Heller.

RE-CROSS EXAMINATION BY MR. COHEN.

Q. Do you wish to be understood that the sheriff, through his watchmen, delivered these goods to the purchasers especially to the plaintiff on the day the sale was completed?

A. No, sir. My recollection of it is they were delivered to him the next morning.

Q. In whose custody were the goods from the close of the sale to the time of delivery?

A. In the custody of the sheriff.

Q. Were the goods bought by the plaintiff separated from the body of the stock that was being sold and kept distinct from those of the other purchasers?

A. Yes, sir.

Q. Were they laid aside in a pile by themselves—each man's purchase?

A. Yes, sir; they were put by themselves so that they could be told from others, and the plaintiff's might have been put in the safe.

Q. You do not say or mean to say that the plaintiff's goods, as he bought them, were mixed with the goods of any other purchasers?

A. No, sir; I do not.

RE-DIRECT EXAMINATION BY MR. BOTSFORD.

Q. Were the goods that were sold at the sale for cash left in the store or were they taken away by the purchasers at the time?

A. I think they were taken out; handed right out over the counter to the—

Q. To whom were they handed out over the counter?

A. To the purchasers; when we sold an article for cash we handed it right over the counter to the purchaser.

Q. In your cross-examination you say that it is your recollection that the plaintiff's goods were delivered to him the next morning. Is it your recollection that they were delivered to him in person, or to Mr. Cohen, his attorney?

A. I think to Mr. Cohen.

VINCENT STEVENS.

Sworn to and subscribed before me, on the day, at the place and between the hours aforesaid.

Witness my hand and seal.

FRANK W. HUGHEY,

[SEAL.]

Notary Public.

And the said Edward Schwed, of lawful age, being by me cautioned and sworn to testify the whole truth and being carefully examined, deposeth and saith :

Q. What is your name, age and place of residence ?

A. Edward Schwed, am 49 years of age and reside in Allegheny City.

Q. Where were you engaged in business ?

A. In Pittsburgh.

Q. How long have you been engaged in business in Pittsburgh ?

A. Not quite twelve years.

Q. Have you been in business yourself or as a member of a firm, and if so of what firm ?

A. I was for two years of the firm of Zugsmith & Schwed, balance of time Schwed & Newhouse.

Q. Which two years of the twelve were you engaged as a member of the firm of Zugsmith & Schwed ?

A. From April 1869 to April 1871, and since then the firm has been Schwed & Newhouse.

Q. As a member of those firms, what business have you carried on during those twelve years ?

A. Jewelry business.

Q. Were you manufacturers of jewelry, or wholesale dealers, or retail dealers ?

A. Wholesale dealers during the whole twelve years.

Q. In what place was the business of Zugsmith & Schwed carried on ?

A. At 93 Wood street.

Q. At what place did Schwed & Newhouse commence to carry on business ?

A. At 41 old number, which is now 65 Fifth aveuue.

Q. How long did Schwed & Newhouse continue to do business at that stand ?

A. Until we were closed out by the sheriff.

Q. Where have you done business since that time ?

A. At the same place: as agents.

Q. Where did you do business before coming to Pittsburgh ?

A. Immediately before coming to Pittsburgh I was clerking in New York with H. G. Boree & Co.

Q. In what business was that firm engaged ?

A. Importers of watches.

Q. How long were you clerk for them ?

A. I was a year before I came here.

Q. What business were you engaged in before you were a clerk ?

A. Wholesale jewelry business, in New York, as a member of the firm of Strauss & Schwed.

Q. How long did that firm exist ?

A. Two years.

Q. What business were you in before that, Mr. Schwed?
A. Clerking for H. G. Boree, the same firm as above.
Q. How long were you clerking for them at that time?
A. From October, 1856, to April, 1866.
Q. What business were you engaged in before that time?
A. I was clerking in Germany.
Q. What business was Mr. Newhouse engaged in before you and he started together?
A. He was traveling in the wholesale jewelry business; had no office or place of business, but sold wholesale from place to place.
Q. How long had he done that before the formation of your firm?
A. From two to three years, about.
Q. What business had he been in before that?
A. Clerking for a firm in New York, the name of which I do not remember; sold picture frames and albums; I believe it was Dubernot.
Q. What is the relation, if any, that exists between you and Newhouse?
A. My mother married Newhouse's father. She died and Newhouse's father married again, and he is the offspring of the last marriage. Mr. Newhouse and I call one another brother, because Mr. Newhouse's parents adopted me as their child.
Q. What relation or connection do you sustain to H. Heller?
A. He is my brother-in-law; he is the brother of my wife.
Q. State the year in which you married Mr. Heller's sister.
A. April, 1871.
Q. Within what territory did the firm of Schwed & Newhouse usually sell goods?
A. Pennsylvania, Ohio, Indiana, Michigan, and sold in Baltimore and Washington.
Q. Does that course of dealing extend over the whole period of time Schwed & Newhouse have been together?
A. Yes, sir.
Q. What were the points in the states named where you usually sold goods?
A. We sold goods in Altoona, Harrisburg, Greenesbough, Connellsville, Monongahela City, Mount Pleasant, Pittsburgh, Allegheny, Columbus, Cleveland, Steubenville, Lostonica, Chillicothe, Toledo, Fort Wayne, Columbia City, Warsaw, Bay City, Grand Rapids, Flint, Sturgis, and Baltimore and Washington.
Q. What proportion of the number of places at which you sold is the number of places you have given?
A. May be about one-third; cant tell exactly.
Q. What number of traveling agents did the firm of Schwed & Newhouse usually keep employed.
A. One.
Q. Has he been employed during the whole period of the firm?
A. No, sir; he came to us in September, 1878, and has traveled ever since; he travels now for the concern and not for us.
Q. Has he traveled for the business at the stand carried on by Schwed & Newhouse since 1878?
A. Yes; all the time.
Q. What is the full name of this traveling agent?
A. Harry B. Frempton.
Q. During the employment of Frempton, have you had no other traveling agent employed?

A. No, sir.

Q. Who was your traveling agent prior to him?

A. Five years prior to that we had none.

Q. Before that five years, did you have a traveling agent, and if so, who was he?

A. We had one; his name was L. L. Ehrman.

Q. During what portion of the time Mr. Frempton has been employed has he been on the road selling goods?

A. Most of the time he was on the road; nearly all the time.

Q. Did he travel through the states and sell at the places you have named?

A. He did in most of them.

Q. Did either of the firm of Schwed & Newhouse ever travel for the house?

A. Newhouse did travel, he has done so from time to time during the continuance of the firm.

Q. When did he make his last trip?

A. During the summer of 1879—I cannot tell exactly when.

Q. Did he travel through the same territory and sell at the same places as your regular traveling agent did?

A. He did in most of them.

Q. Did Mr. Newhouse and your regular traveling agent each sell about the same amount of goods?

A. I cannot tell; never kept any account.

Q. Did you have any clerks employed in the place of business?

A. We had no clerks but an errand boy.

Q. Who kept the books of the firm?

A. I did, and have been doing so during the whole life of the firm, except occasionally when Mr. Newhouse would make a few entries. I had charge of the keeping of the books.

Q. When you commenced business with Mr. Newhouse, were you and he both book-keepers, as that word is understood in the commercial world?

A. Newhouse was not; I understood the business of book-keeping.

Q. Did you ever travel for the firm of Schwed & Newhouse?

A. No, sir.

A. What books have been kept by the firm of Schwed & Newhouse; please name each of them?

A. Day-book, ledger, cash-book and bills receivable book, and kind of a memorandum book in which is kept a list of bills sent out for collection, and an order book, and a memorandum book for goods given out on memorandum for our customers to select from.

Q. Did you keep an invoice book of goods purchased?

A. We keep an invoice file; we paste our bills on file.

Q. Have you those books and files still in your possession?

A. I have.

Q. How far back do the entries in your present books extend?

A. May be from two to three years; I cannot tell exactly.

Q. Were you using the books you keep now in 1879.

A. I think I did.

Q. Do you keep a merchandise account?

A. No, sir; and have never kept one.

Q. How often do you take account of stock?

A. Once a year.

Q When did you take your last?

A. January first, 1880.

Q. Has there been no account of stock taken since at your house?

A. It has.

Q. When?

A. In the beginning of January, 1881.

Q. Did you take an account of stock in January of each year preceeding January, 1880?

A. We did.

Q. Where are those several accounts of stock taken for each year, including the one taken for January, 1880?

A. I think they are in our possession yet.

Q. Will you please, at the first meeting after our next adjournment, produce for our examination in the giving of your deposition, the files of bills purchased and accounts of stock taken during the whole time of the continuance of your firm?

A. I will try to.

Q. During the continuance of your firm, from what persons and firms did you usually buy goods; please give their names as far as you now recollect?

A. I don't recollect. I can give you some, not all; we bought from Wm. Smith & Co., New York; Sussfeld, Lorsch & Co., New York; Julien Gallatt, New York; Lincoln, Left & Co., H. F. Barrens & Co., Furman & Co., J. W. Richardson & Co., Earnest Tooner, Silcox & Culey, Seth Thomas Clock Co., E. N. Welch Manufacturing Co., Owen & Co., and a good many other houses in New York that I cannot recollect now. In Providence, R. I., Wm. C. Grant & Co., Pettish & Buffington, Fanning & Porter, Ballou & Co., Wait, Smith & Co, White & Co., and some more I don't recollect. Attleboro, Massachusetts, R. Blackington & Co., W. & S. Blackington, Balis & Bacon, and a few more; I don't remember them now. Planville Manufacturing Co., in Planville, Massachusetts. These are all I can remember now.

Q. What was the kind and character of the goods customarily bought by Schwed & Newhouse?

A. Solid gold, gold plate, and gilt, solid silver, nickel-plated, some silver-plated, clocks, watches; we used to keep watch material, tools, and spectacles.

Q. About what proportion in value of the gold goods was solid?

A. I cannot say; we used to buy what we thought we would need.

Q. Can you tell by examining your books or files of bills purchased, or from your account of stock, the quality of goods bought?

A. The quality of goods bought are described in the invoices.

Q. Please state the percentage of profits usually made in the sale of goods by your firm?

A. It depends entirely upon what kind of goods they are; some goods we make ten per cent on and some twenty-five per cent on.

Q. Your profits then would average somewhere near eighteen per cent.

A. Yes, sir.

Q. On which class of goods were the lowest profits made?

A. Watches, solid gold and silver chains and some style of rings?

Q. About what has been the average amount of sales made by Schwed & Newhouse each year?

A. We sold from $100,000 down to $20,000.
A. In what years did you sell nearly $100,000?
A. In 1872.
Q. About what were your sales in 1373?
A. I believe in 1873 it was about $50,000, or somewhere near there.
Q. About what was the amount in 1874?

Not beng able to complete the taking of said depositions for the reason that the hour of adjournment, viz. six o'clock, has arrived, I adjourn the further taking of the same until to-morrow morning, then to be continued at the place and between the hours mentioned in the annexed notice.

FRANK W. HUGHEY,
Notary Public.

Pursuant to adjournment, on this fourth day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of George W. DeCamp, number 160 Fourth avenue, Pittsburgh, Pennsylvania, I continued the taking of said deposition, as follows:

FURTHER EXAMINATION OF MR. SCHWED.

Q. Have you produced your accounts of stock referred to in your yesterday's examination?
A. I have the books here and state them to you.
Q. When was the first account of stock taken by Schwed & Newhouse?
A. (Witness takes book and referring thereto, states:) January first, 1872.
Q. What was your amount of stock at that time, as shown by said account?
A. Stock and fixures amounted to $16,016.92.
Q. Did that include bills receivable and accounts due at the time that stock was taken?
A. No, sir.
Q. What was the amount of bills receivable and accounts due Schwed & Newhouse at that time?
A. I cannot recollect.
Q. Can you ascertain by referring to your books of account?
A. I cannot.
Q. Why not; please explain fully?
A. I kept no account of bills receivable. I can ascertain through my ledger the accounts that were outstanding at that time. It would take a long time to do that.
Q. Please state whether at the time of taking the account of stock you did not also take an account of the amount of indebtedness due you for bills sold and make some memorandum of the same?
A. We did.
Q. Did you do that at each time of taking account of stock?
A. We did.
Q. In which book did you make the memorandum of the amount of such debts?
A. In no book.
Q. Where did you make the memorandum?
A. On sheets of paper.
Q. Where are those sheets?
A. We did not keep them.

Q. Is it not usual in taking accounts of merchandise to make and retain with the account a statement of accounts and bills receivable, due and outstanding so that the account will make a complete showing of the assets of the concern?

A. I don't know.

Q. The merchandise account, when one is kept, will ordinarily show the amount of stock on hand at all times during the year, will it not?

A. I think it will.

Q. Is not the object in taking account of stock the ascertainment of the entire assetts of the concern and its condition?

A. It is.

Q. Will you please produce your ledger and give a statement of the amount of accounts and bills receivable due Schwed & Newhouse at the time of taking the accounts of stock from the commencement of business by them to the present time and while they have been in business as you have stated?

A. As stated before I might be able to give the account of bills receivable, it would take weeks to make out the account for the last ten years.

Q. You stated yesterday that you kept a cash-book; can you tell us the amount of cash on hand when you took your first account of stock?

A. I can by referring to that book.

Q. Will you please produce that book and give us a statement of the amount of cash on hand at the time of taking each account of stock?

A. I will.

Q. Please explain to us fully, how and on what basis of valuation you made the account of stock of January first, 1872?

A. On the basis of what we considered them to be worth. We took them on what in our estimation we considered them worth when the account of stock was taken. We did not follow, in taking the account of stock, its prices marked on the goods when they were received into the house.

Q. Were your estimates of the value of the stock usually below or above the prices marked on the goods for sale?

A. Goods that we considered worth the price marked as cost price, we took as they were marked, other goods we took for what we thought they were worth at the time of taking the account of stock. This was never above the price marked.

Q. What was the amount of your next account of stock, and when was it taken?

A. The amount of stock on January first, 1873, amounted to $19,-854.57.

Q. Was that account, and all subsequent accounts of stock taken by your firm, taken in the same manner as the account of January, 1872?

A. They were.

Q. What was the amount and date of the next account of stock?

A. The amount of stock taken January first, 1874, was $17,998.65.

Q. What was the amount and date of the next account of stock?

A. The amount of stock taken January first, 1875, was $15,490.43.

Q. What was the amount and date of the next account of stock?

A. The amount taken January first, 1876, was $13,023.26.

Q. What was the amount and date of the next account of stock?

A. The amount of stock taken January first, 1877, was $10,832.30.

Q. What was the amount and date of the next account taken?

A. The amount of stock taken January first, 1878, was $10,508.62.

Q. What was the amount and date of the next account taken?

A. The amount of stock taken January first, 1879, was $10,449.44.

Q. What was the amount and date of the next account taken?

A. The amount of stock taken January first, 1880, was $8,366.48.

Q. What was the amount of the account of stock taken January, 1881?

A. I decline to answer this.

Q. On what ground do you decline to answer?

A. Because it does not appertain to this examination.

Q. Have you answered thus far because you thought that the matters inquired into and answered appertained to the matter at issue?

A. I did.

Q. Have you not the book in your hands at this time from which you could give us by mere reference thereto the amount of stock taken in January, 1881.

A. I have.

Q. Is the account of the stock taken in January, 1881, in the same book in which the account of stock of January, 1880, appears?

A. It is.

Q. I observe that you have in your hands two books from which you have been giving us the accounts of stock from 1872 to 1880, inclusive; will you please permit me to examine said books?

A. I will show you the amount of stock taken each year by Schwed & Newhouse.

Q. I repeat the question and I desire an answer, yes, or no; whether you will permit me to examine said books?

A. You can examine the books so far as they appertain to the accounts of stock taken by Schwed & Newhouse, as I am not allowed to disclose any business matter of my employer.

Q. Under the advice of what counsel do you refuse to make the disclosure?

A. I have no counsel in this matter.

Q. Have you never talked with Mr. Cohen about this matter?

A. No, sir.

Q. When was this request or instruction to which you have referred, not to disclose any business matter, as you have stated, given to you and where; that is, simply, where and when was that instruction given to you?

A. It was not given to me.

Q. Then it is not true as you have stated that you are not allowed to disclose any business matter, as you have stated, is it?

A. By allowed, I mean my sense of duty toward my employer prevents me from doing it.

Q. Has the suggestion been made to you by any one not to give in this examination or in this case a statement of the amount of the account of stock taken January, 1881?

A. No, sir.

Q. You presume then to decide the question for yourself, without submitting it to the decision of the court in which this cause is pending, that an inquiry into the account taken January, 1881, does not appertain to this controversy?

A. I think at least it does not, and for that reason refuse to give it.

Q. State for what years the accounts appear in the same book with the account of January, 1872?

A. From 1872 to 1876, inclusive, appear in one book.

Q. Do the accounts of stock taken in 1877, 1878, 1879, 1880 and 1881 appear and are they contained in the other book which you now hold in your hands?

A. They do; but the stock taken in 1881 is separated from the others.

Q. Is not each account separate from the other?

A. It is.

Q. In taking the account of 1873, did you make any reference to the account of 1872?

A. I did not.

Q. Who is the owner of the store-room; from whom have you been renting the same, and how long have you been renting from him?

A. The owner of the room is Mr. Henry H. Patterson; have rented from him several years. Henry Patterson succeeded his father in the ownership of the property.

Q. Have you been renting by the month, by the year or how?

A. By the year.

Q. Has that been the case throughout your entire occupancy?

A. It has.

Q. In what month of the year did your first year's tenancy commence?

A. April, 1871.

Q. Was there a written lease made when you commenced to occupy?

A. No, sir; never had a written lease.

Q. Have you occupied under the understanding made at the time of entry ever since?

A. No, sir.

Q. In what respect was the agreement changed?

A. In respect of rent—the amount of rent.

Q. When and what was that change in respect of rent?

A. I cannot remember.

Q. In what year was it do you think?

A. All I know is that for the first few years we paid $600; I think four or five; then for a few years, I think about two years, I can't remember axactly, we paid $450, after that we paid $400.

Q. About when, to the best of your recollection, did you commence to pay at the rate of $400 a year to the present time?

A. About three years ago, I am not positive whether it is more or less.

Q. Have you since continued to pay at the rate of $400 to the present time?

A. We have.

Q. Have you paid by the year or by the month?

A. Every three months; on the first of January and every three months thereafter for the quarter preceding.

Q. What salary have you paid your errand boy and your traveling agent for the last four or five years?

A. Errand boy we paid on an average of $3 per week; traveling agent $15 per week.

Q. Please state what signs were put up by Schwed & Newhouse in front of their stand on Fifth avenue and in front on Wood street, and when they were put up; please describe each sign particularly giving its size and words thereon as nearly as you can?

A. The signs were put up in 1871; all the signs; there is one at the door, one above the door on Fifth avenue, and one on Wood street before our windows. The words on the signs were "Schwed & Newhouse, Jobbers of Watches, Clocks, Jewelry and Materials." Besides this we have a sign at the door of the office; can't describe the signs.

Q. Was the words "Wholesale Jewelers" ever added to your signs and if so to which ones and when?

A. They were never added since the words now on the signs were put up.

Q. Were the signs as put up in 1871 ever changed after that or removed.

A. They were not removed and not changed; the inscription was changed last February by the words "Agents" added.

Q. On which sign?

A. On all signs.

Q. What is the size of the letters composing the words agents as compared with the letters inscribed in 1871 giving names and business?

A. I don't know.

Q. Are they larger or smaller?

A. Can't tell.

Q. State the names of the persons to whom and the amounts you are indebted for jewelry purchased prior to February first, 1880?

A. I can do so by referring to my book.

Q. Will you produce the book and answer the question?

A. I will.

Q. Will you also produce your book and state therefrom the indebtedness due Schwed & Newhouse by accounts January first, 1879 and January first, 1880?

A. I can bring the book that in which the persons are charged. The regular ledger.

Q. Please state in what bank you deposited in 1879 and 1880?

A. Schwed & Newhouse deposited in 1879 in the Bank of Commerce, Pittsburgh, and January, 1880, also, until we were closed by the sheriff.

Q. Will you produce your bank-book for 1879?

A. I will.

Q. What was the amount of cash on hand on January first, 1879, as shown by your cash-book?

A. $67.93.

Q. How often have you balanced the cash account?

A. Every month.

Q. Please state the amount of cash on hand first of each month of 1879.

A. February, $39.45; March, $399.78; April, $135.45; May, $24.41; June, $12.61; July, $116.04; August, $207.55; September, $72.67; October, $52.01; November, $122.89; December, $129.14.

Q. What was the amount on hand January first, 1880?

A. $267.70.

Q. Does the book from which you have been giving the above amounts show amounts of cash on hand the first day of any month of 1880, besides January, or the amount on hand January first, 1881, if so, please state which months?

A. It does; every month in 1880, and also January first, 1881.

Q. State amount of cash on hand February first, 1880?

A. I decline to answer this.

Q. Please state the amount of cash on hand the first day of each month in 1880, commencing with March of that year, and also amount on hand January first, 1881?

A. I decline.

Q. Could you not give those amounts from the books in your hands as readily as you gave the amounts of cash each month in 1879?

A. I could.

Q. Do the accounts of cash on hand in 1879 and 1880 appear continuously from page to page in the same book?

A. They do, with this difference: that when the account for Mrs. Schwed commences it is thus marked; that it is for Mrs. Schwed's account.

Q. Who do you mean by Mrs. Schwed.

A. The owner of stock in business, everything pertaining to the concern.

Q. Since when has she been owner of stock and business?

A. Since February, 1880; from a few days after the sale.

Q. Is this Mrs. Schwed, to whom you refer, your wife?

A. She is.

Q. And is she the employer to whom you have referred and the principal of whom you claim Schwed & Newhouse have been its agents?

A. She is.

Q. Why do you refuse to exhibit the cash account for February first, 1880?

A. Because I do not believe I would do justice to my employer.

Q. I understand you to say that there is a balance stated in the cash account February first, 1880?

A. I did not say so.

Q. What is the fact.

A. There was a balance January twenty-fourth, 1880.

Q. Will you state that balance?

A. I will.

Q. How much was it?

A. $399.75.

Q. Why did you strike a balance on January twenty-fourth, 1880?

A. I did not strike then; I struck that balance after I was in possession of my books again, and struck it to January twenty-fourth, not to mix it with my wife's business.

Q. From what time and date does your wife's account commence to run?

A. From February fifth, 1880.

Q. What is the date of the last item in the cash account preceding that?

A. January twenty-sixth, 1880.

Q. What is that item?

A. $150 which was received by mail from our house in Kansas City.

Q. Is that all the amounts received that day?

A. It is.

Q. State all the amounts received on January twenty-fifth, 1880?

A. Nothing received on the twenty-fifth.

Q. How long after February fifth, 1880, before you struck the balance of January twenty-fourth, 1880?

A. As I have stated on the day I received my books; on the fifth, I believe.

Q. In keeping your accounts in 1879 did you carry forward from month to month the balance of the preceding month?

A. I did.

Q. Did you pursue the same course in 1880?

A. I did, with the exception of the January balance.

Q. What did you do with that?

A. Spent it.

Q. When and for what did you spend it?

A. I cannot recollect any more.

Q. Did you spend it before or after February fifth, 1880, when you say you struck the balance?

A. I don't know.

Q. Don't you know whether the balance of $399.75 on hand January twenty-fourth, 1880, which balance you say was not struck to February fifth, 1880, could not have been spent until after you struck the balance?

A. I may have spent some before and some afterwards.

Q. To whom did you pay money between January twenty-fourth, 1880, and February fifth, 1880?

A. I don't know.

Q. Please give the aggregate of the amount of balance on hand January twenty-fourth, 1880, and the amounts collected after that balance was struck and on the twenty-fourth, twenty-fifth and twenty-sixth days of the same month?

A. There was nothing collected but $150 and that with the balance makes $549.75.

Q. Was not January twenty-sixth, 1880, the day on which the judgments here and at Kansas City, in favor of H. Heller and against Schwed & Newhouse were both confessed?

A. We were closed up here by the sheriff January twenty-sixth, 1880, and I received a telegram from Mr. Newhouse at Kansas City, that they were closed up there.

Q. You received the $150 that you have stated the same day you were closed up, did you not.

A. Yes, sir.

Q. Did you receive the $150 before or after you were closed up?

A. Before.

Q. Do you think you closed up in the morning or evening?

A. I was closed up about noon.

Q. What time during the day did you receive the dispatch from Mr. Newhouse?

A. I think it was in the afternoon.

Q. Are you certain about it?

A. If I received it that day I am certain it was in the afternoon. I am not positive, it may have been the next morning.

Q. Was this balance of $399.75 and the $150 collected on January twenty-sixth, 1880, put in the bank or kept in the money drawer of Schwed & Newhouse?

A. Part of it was in bank and part of it I had in my possession.

Q. What portion of it was put in bank and when?

A. I don't know, the last deposit I made in bank was on January twenty-third, 1880.

Q. I repeat the question, when did you deposit in bank the portion of $549.75, which you have stated you have deposited in bank?

A. The last deposit was made on January twenty-third, 1880, and that made a part of the balance of January twenty-fourth, 1880.

Q. What do you mean in your first answer on this page, by saying that part of this money was in your possession?

A. I had it in my pocket.

Q. How much?

A. I can't remember.

Q. Was that when you put the $150—?

A. I don't remember.

Q. What was the first day after February fifth, 1880, that you made any sales?

A. I don't know it at present.

Q. Can you tell by reference to your day-book?

A. I can.

Q. Will you produce it and answer the question?

A. I will decline to answer that question.

Q. State fully why you decline?

A. For the reason that I have given before.

Q. State whether the first item in your cash account of February fifth, 1880, was from goods sold that day or from money collected on previous outstanding accounts?

A. I decline to answer.

Q. State whether any items in the cash account of February, 1880, were from accounts due and outstanding February fifth, 1880?

A. I decline to answer.

Q. State whether any of the items in the cash account of March, April, May, June, July, August, September, October, November and December, 1880, and January, 1881, are from collections made, accounts due and outstanding February fifth, 1880?

A. I decline to answer.

Q. Have you since February fifth, 1880, collected any accounts or bills recievable due Schwed and Newhouse February fifth, 1880, for merchandise sold by them previously to the day they were closed up by the sheriff, and if so, state the dates and amounts of such collections, and if you cannot state the dates and amounts from memory, please do so from any memorandum or books in your custody or possession?

A. We have collected some accounts; I do not remember the dates nor do I remember the amounts.

Q. Can you state from memory about how much you have collected?

A. No, sir.

Q. Have any of the amounts collected been entered on the cash account since February fifth, 1880?

A. No, sir.

Q. Where have they been entered?

A. Nowhere.

Q. Have you no memoranda or books from which you can give us the amount of said collection?

A. I could by refering to the ledger.

Q. What ledger?

A. The ledger they are entered in.

Q. Do you mean the ledger in which you have been keeping accounts during the last year?

A. It is the same ledger that I used before February fifty, 1880, that I use now.

Q. Have you been keeping accounts in said ledger since February fifth, 1880, the same as before?

A. I either opened new accounts or drew a line on the old accounts.

Q. Do all the collections made by you since February fifth, 1880, of accounts due and outstanding on that day, appear in your ledger?

A. They do.

Q. From what book of original entries have these collections been carried into the ledger?

A. From the day-book.

Q. Is this the same day-book in which you have kept the accounts of Mrs. Schwed since February fifth, 1880?

A. It is.

Q. From what book has it been your custom to carry the items into the cash book?

A. From the same book—that is from the day-book.

Q. Where have you deposited the moneys collected by you since February fifth, 1880, on bills receivable on accounts due and outstanding on that day?

A. No where.

Q. What have you done with it?

A. Spent it.

Q. Have all the cash items that appear on your day-book since February fifth, 1880, been carried into your cash-book; I mean items received and items paid out?

A. I decline to answer.

Q. Why do you decline?

A. For the reason stated before.

Q. Were the accounts and bills receivable due Schwed & Newhouse February fifth, 1880, sold by the sheriff at the sale on February third, 1880?

A. They were not.

Q. Then why do you object to an examination of the books and accounts kept since that day so far as to enable us to ascertain the amounts of moneys collected by you from said accounts and bills receivable?

A. I do not object.

Q. Then will you let me now examine the day-book, ledger and cash-book kept since February fifth, 1880, into which you have entered the collections made since that date from said accounts and bills receivable?

A. The day-book I have not with me, the ledger you can examine, but not the cash-book.

Q. Will you produce the day-book and let me examine it in connection with the ledger?

A. I will.

Q Why are you willing that we should examine the day-book and ledger kept since February fifth, 1880, and not the cash book?

A. For the reason above stated.

Q. Have you received any instruction or suggestion from your wife who you say is your employer, not to produce any of those books?

A. No, sir.

Q. On whose suggestion or instruction do you make the refusal?

A. On nobody's.

Q. You stated this morning that you were not allowed to disclose any of your employer's business; why are you willing to disclose that part

of your employer's business which appears in the day-book and ledger, and not that part that appears in the cash-book?

A. I am not willing to disclose part that pertains to the business I am agent for, you can only see what we have collected from old accounts.

Q. If you have entered your cash collections from old accounts and bills receivable in the same day-book and ledger in which you have kept the accounts of your business done since February fifth, 1880, how could we examine into and ascertain the amount of such collections without seeing the accounts of your business done since that day?

A. The accounts are separated.

Q. How are your accounts kept in the day-book; please explain fully?

A. They are entered just the way they come in.

Q. What is entered on the day-book?

A. The sales, the amounts bought, cash received and paid out, amount of goods bought.

Q. You have stated that whenever since February fifth, 1880, collections have been made on account of accounts, on that day they were entered on the day-book, were they entered on the same record and in connection with the entries of purchases and sales made on that day?

A. They were.

Q. Did you also enter in the same connection the cash derived from sales made that day, that is on the day-book?

A. I decline to answer this.

Q. If on any day since February fifth, 1880, there appears on your day-book any item of the receipt of cash, can you tell from such item as entered on your day-book, whether it was derived from a sale of goods made that day or from a prior sale, made either before or after February fifth, 1880?

A. The accounts on the ledger will show that.

Q. That answer is not responsive to the question, and the notary will please read the question again to the witness?

A. I do not put the cash sales on the day-book.

Q. Suppose that on some day in November last, there appears in your day-book, cash received of $75, could you tell from that item, as entered in the day-book and without reference to the ledger, whether that collection was from goods sold before or after February fifth, 1880?

A. I could not.

Q. Did Mr. Newhouse receive any moneys that have been collected since February fifth, 1880?

A. He spent a part of it; some of it has been paid to Mr. Newhouse.

Q. How much of the collections made since February fifth, 1880, have been paid to Mr. Newhouse and how much to you?

A. I don't know.

Q. How much of those collections have been paid out by you and how much by him?

A. I don't know.

Q. Is Mr. Newhouse a married man, and if so, how much of a family has he?

A. He is not married and never was.

Q. During the last two years while Mr. Newhouse has been in Pittsburgh, where has he resided?

A. He lives with me.

Q. Will you please give us now a statement of the disposition made by you and Mr. Newhouse of moneys received since February fifth, 1880?

A. We spent it.

Q. For what?

A. I do not remember.

Q. What was the amount and date of your last deposit in bank of any moneys either in the name of Schwed & Newhouse, Edward Schwed, Simon H. Newhouse, Schwed & Newhouse, Agents, or Mrs. Schwed?

A. There was no money deposited for either Edward Schwed, Simon H. Newhouse or Mrs. Schwed. The last deposit for Schwed & Newhouse was January twenty-third, 1880; amount $149.75.

Q. Can you tell us the amount of money deposited by Schwed & Newhouse in the Bank of Commerce, Pittsburgh, during the year of 1879?

A. "Balance" was struck August fifteenth, 1878, and the next balance was struck May first, 1879.

Q. Please compare the balance in your favor August fifteenth, 1878, with the footing of deposits when the next balance on May first, 1879, was struck and give us the aggregate deposits between those dates?

A. The deposits between those dates amounts to $13,004.94.

Q. When was the next balance struck?

A. August nineteenth, 1879.

Q. What amount was deposited between May first, 1879, and August nineteenth, 1879.

A. $10,072.59.

Q. What is the date of the next balance in your bank-book?

A. January, 1880; there is no date in the pass-book, the last entry on the pass-book is January third, 1880.

Q. What is the amount that was deposited between the last balance and the one next preceding it?

A. $6,389.85.

Q. You have not yet answered the question whether any money has been deposited in bank in the name of Schwed & Newhouse, Agents; will you please do so now?

A. Since February last we deposited as Schwed & Newhouse, Agents.

Q. Have these last deposits been made in the same bank as the others you have detailed?

A. Yes, sir; they have.

Q. What is the date and amount of the first deposit made in the name of Schwed & Newhouse, Agents?

A. I don't know.

Q. Have you the pass-book of Schwed & Newhouse, Agents, with you?

A. I have not.

Q. Where is it?

A. In the place of business.

Q. Will you please produce that book and give us the date and amount of the first deposit, the amount deposited subsequently, and down to the next balance, and the amount deposited to this time?

A. I decline to do it.

Q. On what grounds do you decline?

A. For reasons stated before.

Q. State whether deposits in bank were customarily made as moneys are collected or received?

A. That depends entirely; some money is deposited and some is not.

Q. At the close of each day, what amount of money was usually left in the drawer?

A. I cannot tell; sometimes a few dollars, sometimes $50, sometimes a $100, sometimes $200 and sometimes none at all.

Q. Was it usual for either yourself or Mr. Newhouse to take money out of the drawer since February fifth, 1880?

A. Not for our private expenses, except the money we were entitled to.

Q. Did each of you have the same access to the money drawer as the other?

A. Yes, sir.

Q. Have checks been drawn since February fifth, 1880, by both yourself and Mr. Newhouse?

A. Yes, sir.

Q. Has there been an account kept since February fifth, 1880, between yourself and Mr. Newhouse?

A. No, sir.

Q. Has there been any account kept of the moneys taken out of the drawer or drawn out of the bank by either yourself or Mr. Newhouse since February fifth, 1880?

A. We did not draw any amount except our wages, for which a little memorandum is kept.

Q. When moneys were drawn for wages, state whether any receipts were given and to whom they were given?

A. There were no receipts given.

Q. What has been the amount received by you since February fifth, 1880, on your personal account out of the concern?

A. $15 a week.

Q. Is that all you have taken?

A. That is all.

Q. How much has Mr. Newhouse received?

A. Same amount.

Q. What has been done with the balance of the moneys collected since February fifth, 1880, by either you or Mr. Newhouse?

Counsel for defendants now ask plaintiffs' counsel whether he refers to the old or new concern? To which plaintiffs' counsel respond, that the question is plain as requiring a simple statement of the disposition that has been made of the moneys collected or received by either Mr. Schwed or Mr. Newhouse since February fifth, 1880, after deducting the $15 a week paid to each of them, as the witness has stated.

A. The money collected for the new concern was put in the bank or paid out for business purposes.

Q. What do you mean by business purposes?

A. Payments for various bills and expenses not paid by check, cash payments or payments in money and not by check.

Q. Have all the moneys collected by Schwed & Newhouse or either of them since February fifth, 1880, that has not been applied to the payment of $15 a week to each of them as stated by you been applied to the payment of expenses and other bills incurred in carrying on the business since that date?

A. All the collections made for the new concern were put in the

new concern; we bought goods, paid rent and other expenses with the balance.

Q. Then the moneys collected by what you call the new concern have been applied to the payment of bills purchased and expenses incurred in carrying on the business of such new concern and in the payment to you and Mr. Newhouse of $15 each per week?

A. All the moneys collected or pertaining to the new concern were applied to these purposes.

Q. What has been done with the moneys collected since February fifth, 1880, on bills sold before that day?

A. We spent it.

Q. Who spent it.

A. Newhouse and myself.

Q. You have stated that you could not tell from an entry of a collection in November last on the day-book whether that collection was for goods sold before or after February fifth, 1880; how can you tell what use you made of such collections, whether it went into the drawer, was deposited in bank, paid out for rent or other expenses, or whether it was used for the private purposes of either yourself or Newhouse?

A. I merely made such entries to enable me to give credit on the ledger to the respective parties that owed the money, without putting the amount in the drawer or bank but using it for private purposes.

Counsel for defendants object to the last preceding question, for the reason that it puts into the mouth of the witness a statement not previously made.

Q. Then the moneys collected by yourself and Mr. Newhouse since February fifth, 1880, on old accounts have, together with all moneys used to pay for goods and running expenses since that date, been applied to the private purposes of yourself and Mr. Newhouse, have they not?

A. I made no such statement as that the money collected from the old concern was applied to buy goods and pay running expenses for the new concern; but the money collected for the new concern was applied to paying bills and running expenses.

Q. Has the money collected since February fifth, 1880, on old accounts been applied in the same manner as the $15 a week which you state has been paid you and Mr. Newhouse each.

A. I don't understand it.

Q. Has the money collected since February fifth, 1880, on old account been applied, paid out or used by you and Mr. Newhouse, or either of you, in the same manner the $15 per week which you state has been paid to each of you, has been applied, paid out or used by you and Mr. Newhouse, or either of you?

A. The money collected from the old concern, as well as the $15 we received weekly, was used for private purposes only.

Q. Which private purposes?

A. For sundry expenses.

Q. What sundry expenses?

A. I don't recollect.

Q. When you have received a collection since February fifth, 1880, on old account, have you paid one-half of the same to Mr. Newhouse, and has he done the same to you?

A. I do not remember.

Q. When collections made since February fifth, 1880, on old ac-

count have been made in check or draft, in which bank would you secure the money or a credit for such check or draft?

A. In no bank.

Q. What did you do with such checks or drafts?

A. I had them cashed; exchanged them for money.

Q. How and by whom were they exchanged?

A. I generally exchanged them with the money that was coming in for the new concern.

Q. After so exchanging them, as stated in your last answer, what particular disposition did you make with the checks or drafts?

A. They were put in the new concern in exchange of the money taken for such checks or drafts?

Q. What use was made of them by what you call the new concern, after being thus exchanged?

A. They were deposited in bank.

Q. In what bank and to whose credit?

A. In the Bank of Commerce of Pittsburgh, to the credit of the new concern.

Q. Will you produce the pass-book kept since February fifth, 1880, and by comparison with your ledger kept since that date, answer as to the amounts of collections on old accounts that have been exchanged and passed to the credit of what you call the new concern, as stated?

A. No, sir.

Q. Why will you not?

A. For the reasons stated before?

Not beng able to complete the taking of said depositions for the reason that the hour of adjournment, viz. six o'clock, has arrived, I adjourn the further taking of the same until to-morrow morning, then to be continued at the place and between the hours mentioned in the annexed notice.

FRANK W. HUGHEY,
Notary Public.

Pursuant to adjournment, on this fifth day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of George W. DeCamp, number 160 Fourth avenue, Pittsburgh, Pennsylvania, I continued the taking of said deposition, as follows:

FURTHER EXAMINATION OF MR. SCHWED.

Q. Was the goods owned by Schwed & Newhouse, in Pittsburgh and Kansas City, that were seized and sold by the sheriff at those places, all the property that was owned by Schwed & Newhouse or either of them at the time of such seizures.

A. I decline all answers not appertaining to the proof of the honesty of the debt of H. Heller.

Q. When did you form that purpose?

A. I do so by advice of counsel.

Q. What counsel gave you that advice and when?

A. Major A. Brown; this morning.

Q. Did you inform Major Brown as to what the averments were, that are contained in the plaintiff's petition in this case, or did you give him a copy of the pleadings so that he could determine what the questions in controversy are?

A. I did not.

Q. Did you consult Mr. Brown on the suggestion of any person and if so on whose suggestion?

A. No, sir.

Q. What interest have you in this suit that causes you to refuse to answer questions propounded to you by counsel?

A. To my knowledge I have no interest in the suit except that I was advised by counsel not to answer any question not appertaining to the proof of the honesty of our debt to H. Heller.

Q. If you have no interest in this controversy or in its results as to whether the judgment proceedings in favor of Mr. Heller, or the attachment proceedings of the attaching creditors is sustained, what induced you to consult counsel on the question as to whether you should or should not answer questions propounded to you as a witness?

A. Because I wished to know whether I am obliged to answer all questions put to me about my affairs after we were sold out, or rather closed up, by the sheriff not appertaining to the honesty of the debt to H. Heller.

Q. The question I asked you first this morning that you refused to answer was whether at the time of the seizures by the sheriff at Pittsburgh and Kansas City of the stock of goods of Schwed & Newhouse. Why do you refuse to answer that question?

A. Because I did not think it appertained to the proof of the honesty of the debt to H. Heller.

Q. Yesterday you refused to answer questions as to transactions of what you claim is the new concern, done since February fifth, 1880, and answered questions on every other point, so far as they were proposed to to you. This question I understand you to refuse to answer any and all questions that does not, in your opinion, appertain to the debt you claim to have owed to Mr. Heller. Why have you changed the course of examination and answering pursued yesterday to the time of adjournment, and why are you not willing, if the transactions in which you claim to have no interest now were honest and made in good faith, to answer fully any question propounded to you by counsel regarding those transactions or any of them?

A. Because I am advised by counsel that all questions put to me in regard to my affairs after we were closed up by the sheriff, do not appertain to the proof of the debt to H. Heller.

Q. Are you still willing to answer all questions as to all matters of which inquiry may be made to you, that occurred prior to February fifth, 1880, when you claim the new concern commenced?

A. I am willing to answer all questions put to me, which to my knowledge I think appertain to the proof of the debt, referring to our doings prior to January twenty-sixth, when we were closed up by the sheriff.

Q. Did you inform your counsel, this morning, that there was a charge in the plaintiff's petition in this case that Schwed & Newhouse, at the time of the confession of the judgments in favor of Mr. Heller, had no other property in the state of Missouri than the property levied on at Kansas City, and that Schwed & Newhouse were insolvent?

Question objected to because the witness is not compellable to disclose any statements made by him to his counsel, they being privileged communications and not the subject of inquiry or investigation in any case.

A. I decline to answer.

Q. On yesterday you had before the notary the books, including your bank pass-book, your books containing your accounts of stock, your

ledger and cash-book which you promised at the time of adjournment to bring back this morning together with your day-book and book containing a list of bills receivable sent out for collection; have you brought any of said books back this morning?

A. I did not.

Q. Why did you not bring them as you promised?

A. By the advice of my counsel I did not bring them.

Q. Will you, please, now produce said books and permit an examination of the same and answer questions therefrom as to all transactions recorded therein, which transactions originated prior to January twenty-sixth, 1880?

A. I will not bring the books but will submit a statement made out from my book of all transactions of Schwed & Newhouse had with H. Heller.

Q. Will you permit us to examine the book or books containing your account with H. Heller?

A. I will allow you to examine my cash-book from which I drew that statement which contained all our transactions with H. Heller to compare that statement with the book, or rather with the amounts appertaining to it.

Q. Will you produce said cash-book and permit us to make such examination therefrom respecting your alleged account with Mr. Heller as we may think proper?

A. I will.

Q. Have you the cash-book here?

A. Not here.

Q. Do you decline to produce the cash-book for any other purpose?

A. No, sir; I do not.

Q. You will then produce it, will you?

A. I will produce it provided the purpose you refer to appertains to the proof of the honesty of the debt to H. Heller.

Q. Will you permit an examination into said cash-book on any matters contained therein, if such matters should not in your opinion appertain to what you claim to be the honesty of the debt to Mr. Heller?

A. I have no objection that you may examine all the entries therein up to January twenty-sixth, 1880.

Q. Do you refuse to allow an examination of any entry or entries made in the cash-book since February fifth, 1880?

A. I do.

Q. Do I understand you so say that the cash-book is the only book in which transactions of H. Heller are recorded?

A. It is.

Q. Did you keep no separate account with H. Heller?

A. I did not.

Q. Do you still decline to produce the ledger, the book containing the accounts of stock which you had here yesterday, and the day-book which you promised to produce this morning?

A. I do.

Q. Will you give us the names of the persons and firms to whom, and the amounts Schwed & Newhouse were indebted at the time they were closed out, for goods bought by them in 1879 and January, 1880?

A. I will not as I do not think it appertains to the proof of the honesty of the debt to H. Heller.

Q. Please state whether in the years 1876, 1877, 1878, 1879, Schwed

& Newhouse transferred to Mr. H. Heller any bills receivable due them from any of their customers.

A. We had on a few occasions discounted such bills for which we received the cash of the full amount of notes less the discount.

Q. By whom were such notes discounted and from whom did you receive the cash as stated?

A. By and from H. Heller.

Q. Did you keep an account of the notes so discounted?

A. I did.

Q. Where did Mr. Heller live during all this time?

A. In Philadelphia.

Q. In what form were the remittances made by him for said discounts?

A. By checks or in payment of note or notes due to him.

Q. When these customers' notes that were discounted were paid by the makers to whom were payments made?

A. To H. Heller through banks I suppose.

Q. When any of these notes were not paid to Mr. Heller by the makers what became of the notes?

A. They were returned to us and made good by us.

Q. How made good?

A. Either by us sending him the amount thereof or he deducting such amounts from the result of papers discounted for us subsequently.

Q. Was this course of dealing continued from time to time during the years I have named, viz., 1876, 1877, 1878, and 1879?

A. It was.

Q. Was this course of dealing also continued from time to time during the preceding years of 1872, 1873, 1874 and 1875?

A. It was.

Q. Did Mr. Heller discount all the bills receivable due you from your customers which you had discounted during those years?

A. He did not.

Q. About what proportion of such discounts was made by Mr. Heller?

A. He only discounted such customers' notes on a few occasions.

Q. What was the total amount of such discounts made from 1872 to 1879 inclusive?

A. My statement which I prepared for this purpose will show it.

Q. Can you now state about the amount of such discounts?

A. I cannot without referring to that statement.

Q. According to the best of your recollection about what was the amount of such discounts?

A. $4,190.55 from 1876 to 1879 inclusive.

Q. Please give us the amounts of such discounts from 1872 to 1875 inclusive?

A. There were no such discounts prior to 1876 to the best of my knowledge.

Q. What do you mean by saying to the best of your knowledge?

A. I mean according to my book.

Q. According to what book?

A. Where these entries are made.

Q. If you depend on the books why did you answer to the best of your recollection?

A. Because in the hurry of making out those statements there might be a possibility that I overlooked an item.

Q. Is this statement which you say you have made an exact copy of a single account with Mr. Heller, or is it made up by items selected out of another account running from 1872 to 1879?

A. In the book out of which I took these amounts figure also other transactions of such discount.

Q. When was this statement made by you?

A. A few days ago.

Q. Does this book, in which you say you kept a list of bills receivable of your customers which were discounted, invariably show by whom the discount was made?

A. Yes, sir.

Q. Does this book show the disposition by you of all the bills receivably due you from your customers that passed out of your hands in trade or otherwise, and that were paid by the makers to other parties than yourselves?

A. It does.

Q. Does it show notes sent out for collection?

A. It does.

Q. Does it show notes that were used as collateral security?

A. It does not.

Q. How much paper of that kind did you use as collateral security; please answer for the whole period from 1872 to 1879, inclusive, and as definitely as you can?

A. We never used any collateral papers.

Q. Have you never made any loans and given collateral securities therefor?

A. No, sir.

Q. Can you state how much money Schwed & Newhouse, from 1871 to 1879, inclusive, paid, deposited with, or in any manner delivered by checks, drafts, currency, post-office order, or otherwise to Mr. H. Heller?

A. Yes, sir; by referring to my statement which I made out for that purpose.

Q. How much was the gross amount for any or all purposes?

A. (Witness after computing from his statement, answers,) $21,669.32.

Q. Can you tell about the amount of said sum of which you paid or delivered to Mr. Heller each year, from 1872 to 1879, inclusive?

A. Yes, sir; 1872, $2,026.42, about; 1873, $6,120, about; 1874, $4,120, about; 1875, $3,286.47, about; 1876, $1,223.32, about; 1877, $2,331, about; 1878, $879, about; 1879, there was no cash paid. I wish to make a correction in my last preceding answer. Two items, viz. one August twentieth, 1877, amounting to $595, and one item of January sixteenth, 1879, amounting to $1,000, figures as cash paid, while they should be amount paid in trade papers by trade papers; I understand bills receivable received by us from our customers.

Q. The balance of the aggregate of $21,669.72, after deducting said trade papers, was cash, was it not?

A. Yes, sir.

Q. Were said two trade papers, included in the aggregate of $4,190.25 of bills receivable of customers, discounted by Mr. Heller?

A. No, sir; they were not included.

Witness desires to make some corrections.

To satisfy myself whether my statements are correct, I looked over my books during noon hour to-day. I found one item omitted in my

statement regarding trade papers discounted by H. Heller. I found in a preceding book which I overlooked to examine, another such item of trade papers discounted by H. Heller, amonnting to $1,122.28.

Q. Is that item embraced in the aggregate of $21,669.72 of moneys paid as you have stated to Mr. Heller?

A. It is not.

Q. Then adding together the aggregate of $4,190.25 of bills receivable of customers discounted by Mr. Heller, the two bills receivable of $595 and $1,000 referred to above, and said item of $1,122.28, how much is the aggregate of your customers' paper that passed to Mr Heller.

A. $6,907.83.

Q. Deducting from the aggregate amount of cash so stated the two trade papers, what was the true amount of cash that went to Mr. Heller?

A. $20,074,32.

Q. When were the bills receivable amounting to $1,122.28 referred to in your correction delivered to Mr. Heller?

A. February twenty-second, 1876; they were mailed as far as I can recollect.

Q. Was the written statement which you stated this morning was prepared within a few days ago made this week?

A. It was.

Q. What day this week?

A. On Tuesday, I believe.

Q. Where was it made and who were present while it was being made or prepared, either in whole or in part?

A. At 65 Fifth avenue in the presence of Mr. Holmes of counsel, I don't know the gentleman's first name.

Q. How long was the counsel present while you were making or preparing the said statement?

A. I can't remember.

Q. Was any account or statement of Mr. Heller's shown to you or referred to or in any manner used while you were making or preparing your statement?

A. No, sir.

Q. Have you ever seen any statement of account made up by Mr. Heller or any one for him in this case up to this time?

A. No, sir.

Q. State whether Schwed & Newhouse on or about February twelfth, 1880, sent to their creditors or any of them, by mail or otherwise, a circular letter of any kind?

Objected to for the reason that the letter itself is the best evidence.

A. They did.

Q. Was said circular in writing or in print?

A. In print.

Q. Did you send it to all of your creditors?

A. To the best of my recollection, we did.

Q. Have you now any of those printed circulars?

A. I may have; I am not sure whether there are any left.

Q. Will you please examine and see whether you have any left and if you find any will attach one to this deposition as an exhibit?

A. I will.

Q. Will you please examine exhibit "M" attached to the plaintiff's

deposition taken in the city of New York and state whether said exhibit is a copy of said circular?

Objected to for the reason that the circular itself is the best evidence and it appears from the said plaintiff's (evidence) depositions that he is in possession of the original circular.

A. I cannot tell before comparing the copy with the original.

Q. If you said in said circular, "We hope at a very early date to be able to set out some offer of compromise to our creditors to which end we have been promised assistance by one or two of our friends" to whom did you allude by the expression "by one or two of our friends?"

Objected to because any such statements, if made, cannot effect nor are they a proper subject of inquiry in this investigation.

A. I decline to answer.

Q. What did you mean in said circular by the use of the words: "Our failure has been purely the result of misfortune and reverses, and in no way identified with anything fraudulent or dishonest?"

Objected to for the reason that the witness has not stated that the circular from which the above quotation is made, is the circular issued, and has nothing to do with this case.

A. We meant exactly what the words imply, if such expression in our circular is used.

Q. Had anyone accused you of conduct fraudulent or dishonorable before writing said circular, and if so, give the names of the persons who had made the accusation?

Objected to because the question is impertinent in a legal sense.

A Nobody has accused us personally; what I mean is not to us personally.

Q. Had any of your creditors from whom you had bought goods sued you or threatened you with suit before the judgment in favor of Heller were confessed?

Objected to as immaterial, having no bearing on this case.

A. No, sir.

Q. Did you in 1878, 1879 or January, 1880, or at any time prior to those years, inform any of the persons from whom you bought goods of the business relations between you and Mr. Heller, or that you gave him the judgment notes on which the judgment in his favor were confessed?

A. No, sir.

Q. Do you and Mr. Newhouse anticipate going into business in the City of New York; if so, in what business and at what street and number, if you have yet determined the place?

Objected to as being irrelevant and having nothing to do with the subject matter of injury and as being the witness' own private affairs.

A. I decline to answer.

Two papers shown witness which he states are the original notes in which the judgments in favor of H. Heller and against Schwed & Newhouse, and rendered at Pittsburgh and Kansas City, were confessed.

Q. In whose hand-writing is the body of said instruments?

A. They are mine; all the writing on both notes, except the signature on one of the notes of Simon H. Newhouse, is mine. They are on printed blanks, filled in.

Q. Was Mr. Heller present when said notes were written or either of them?

A. No. sir.

Q. Was any person present?

A. No, sir; except my partner, when we made the first of those two notes.

Q. To whom did you deliver the notes, respectively?

A. The note of February, 1879, we sent by mail to H. Heller, the second of December, 1879, we handed to Mr. Cohen, attorney for H. Heller.

Q. When did you establish the business in Kansas City?

A. About the latter part of August, 1879.

Q. When did you form the purpose to establish a business in Kansas City?

A. About two months previous to our going there.

Q. Then you formed the purpose to establish the business in Kansas City after the date of the judgment note of $9,000 on which the judgment at Kansas City was confessed, did you?

Objected to as irrelevant and having no connection with the issue in this case.

A. We did.

Q. Did you make an affidavit or power-of-attorney about January fifteenth, 1880, to enable the judgment at Kansas City to be confessed?

Objected to because the record itself is the best evidence if such exists.

Witness examines original papers.

A. I did; I signed papers shown me, number 4498.

Q. Did you sign for the purpose of enabling a judgment to be confessed at Kansas City?

Objected to for the reason that the power-of-attorney exhibited to the witness is the best evidence.

Q. I did sign it for the purpose therein stated.

A. Do you still decline to produce your ledger, day-book and other books which you declined to produce this morning?

A. I do.

Col. Botsford states that he now closes with the witness and turns him over for cross-examination.

Not being able to complete the taking of said depositions this day, by agreement of attorneys for both plaintiffs and defendants, I adjourn the further taking of the same until Monday, February seventh, 1881, then to be continued at the place and between the hours mentioned in the annexed notice.

FRANK W. HUGHEY,
Notary Public.

Pursuant to adjournment on this seventh day of February, A. D, 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of G. W. DeCamp, No. 160 Fourth avenue, Pittsburgh, Pennsylvania, I continued the taking of depositions as follows.

CROSS-EXAMINATION BY MR. HOLMES.

Q. In your examination in chief you stated that the profits on goods sold by Schwed & Newhouse ranged from 10 to 25 per cent.; that you therefore made an average profit of about 18 per cent. In order to make that conclusion correct would not Schwed & Newhouse be compelled to sell about the same amount of goods which yielded a profit of 25 per cent. as of goods which yielded a profit of only 10 per cent.

A. Yes, sir.

Q. Did you sell the same amount of each?

A. I can't say.

Q. You stated in your examination in chief that Schwed & Newhouse never made a statement to any other of their creditors of their business relations with H. Heller, please state whether or not Schwed & Newhouse were ever asked by any of the creditors for a statement of their assets or liabilities or financial condition?

A. We were never asked nor did we ever give such a statement as we could get all the goods we wanted.

Q. During the business of Schwed & Newhouse were they ever at any time asked to give a verbal or written statement of the financial condition of their business affairs by any of their creditors.

A. No, sir.

Q. While being examined in chief, you declined to produce certain books for the inspection and examination of plaintiffs and their counsel, do you wish to be understood as declining to produce for such inspection and examination any book or books, whatever, of Schwed & Newhouse which contain any entry or entries pertaining to H. Heller or his account, or his business with Schwed & Newhouse?

A. No, sir; if you give me time to get them.

Q. Will you now go and get such books and produce them for such inspection and examination and for use in the further giving of your deposition in this case?

A. I will.

Q. You stated in your examination in chief, that Schwed & Newhouse formed the determinatlon of going to Kansas City about ten months before opening out there, please state how you came to open out a branch of your business at Kansas City; explain fully?

A. Not being satisfied with our business here, we wished to make a change, when we were informed that Mr. Noah Mitchell, from Kansas City, wished to sell out, we wrote him that I wished to meet him at Philadelphia to make preliminary arrangements. We did meet and those arrangements were satisfactory to both; whereupon S. H. Newhouse went to Kansas City with Mr. Mitchell, but they could not agree as to the price of stock. Upon examination and information, Newhouse found that the prospects there to establish a business in our line was good, we concluded to open a branch at Kansas City, and if our expectations were realized, we would remove our business from Pittsburgh to Kansas City.

Q. In what business was Noah Mitchell engaged at Kansas City?

A. In the wholesale jewelry business.

Q. How long were your negotiations with Mr. Mitchell pending?

A. Only a short time.

Q. Did you make any investigation among jobbers in your line of business as to the prospects of your proposed enterprise in buying out Noah Mitchell at Kansas City?

A. We did.

Q. State what?

A. We wrote to Sussfeld, Lorsch & Co. to give us all the information they might have about Mr. Mitchell and his Kansas City trade, whereupon we received the following answer or reply: "New York, June 18th, 1879."

Q. Is that date of the letter you received from Lussfeld, Lorsch & Co. in answer to your inquiry?

A. It is.

Q. Will you please allow that letter to be made a part of your deposition and attached thereto by the notary as an exhibit?

A. I will.

Witness handed me the letter which is hereto marked exhibit "B."

FRANK W. HUGHEY,
Notary Public.

Q. Have you now returned and produced all books of Schwed & Newhouse which contain any entry or entries pertaining to H. Heller on his account or business with Schwed & Newhouse, if so state what those books are and if any one or more of said books contains the record of the business of any concern other than Schwed & Newhouse; please state between what pages the business of Schwed & Newhouse may be found?

A. The books are ledger, cash books, bills receivable book, discount and collection books; discounts and collections are entered in the same books. The book in which the business of Schwed & Newhouse with H. Heller may be found in connection with, or rather in which is also entered the business of another firm, is the second cash-book in which the transactions of Schwed & Newhouse with H. Heller may be found is from page 1 to page 109, inclusive.

Q. What is the number of the last page in said second cash-book, on which is entered any business transaction of Schwed & Newhouse?

A. One hundred and nine.

Q. Are said ledger, first cash-book, pages 1 to 109 inclusive, of said second cash-book, bills receivable book and discount and collection books now open for the inspection and examination of plaintiffs and their counsel?

A. They are.

Q. To the business of what concern or firm do the entries in said second cash-book following page 109 pertain?

A. To the business of Mrs. E. Schwed.

Q. Do all the books which you have produced show all business transactions between Schwed & Newhouse and H. Heller from the time Schwed & Newhouse commenced business to the present time?

A. They do.

Q. Have Schwed & Newhouse, since they commenced business, ever borrowed any money from H. Heller, if you say yes, please refer to your books and give the amount and date of the first money received by Schwed & Newhouse from H. Heller, as a loan?

A. Yes; the first money we received was February thirteenth, 1872, amounting to $1,000.

Q. What is the exact entry as it appears on the book?

A. February thirteenth, H. Heller, $1,000.

Q. In what book does said entry appear?

A. In the first cash-book.

Q. Give the number of the page and the dates of all other entries on said page, stating first those which precede that entry and next those which follow it?

A. Page 42; the dates preceding are three entries on the first of February, one on the third, one on the fifth, one on the sixth, five on the seventh, one on the tenth, one on the twelfth. .The entries following are dated one the twelfth, three the fourteenth, two the fifteenth, two the sixteenth, one the fourteenth, one the fifteenth, one the sixteenth, two on the nineteenth, three the twentieth, one the tenth, three the twenty-first, three the twenty-second, one the twenty-third.

Q. I believe you stated in you examination in chief that you kept the books of Schwed & Newhouse; please state whether or not said entries including the one of February thirteenth, 1872, were made in the regular course of business and at the times they bear date?

A. They were.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give its date and amount and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this loan we gave H. Heller our due-bill, dated Pittsburgh, February thirteenth, 1872, for $1,000.

Due-bill handed to me by witness and marked exhibit "C," as attached hereto. FRANK W. HUGHEY,
Notary Public.

Q. Please refer to your book and give the amount and date of the next money Schwed & Newhouse received from H. Heller as a loan.

A. October eighth, 1872, $2,000.

Q. What is the exact language of the entry as it appears on the book?

A. October the eighth, 1872, H. Heller, $2,000.

Q. Give the name of the book and number of the page where said entry is found and the dates of all other entries on said page, stating first those which precede and next those which follow it?

A. First cash-book, page 288; preceding entries, one on the eleventh, two on the twelfth, one on the thirteenth, four on the fourteenth, one on the fifteenth, two on the sixteenth, one on the fifteenth, three on the sixteenth. The following entries we find one the sixteenth, two on the seventeenth, five on the eighteenth, three on the nineteenth and five on the twenty-first.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give its date and amount if you can, and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. We gave a note for above amount but which is not in our possession any more.

Q. Have you made search for said note in the places where it ought to be found if in your possession, or that of Schwed & Newhouse?

A. I did but could not find it, as sometimes I tear notes paid.

Q. Please refer to your books and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. January the thirtieth, 1873, $979.34.

Q. What is the exact language of the entry as it appears on the book?

A. January the thirtieth, 1873, H. Heller, discount $979.34.

Q. Give the name of the book and the number of the page where said entry is found and the dates of all other entries on said page stating first those which precede and next those which follow it?

A. First cash-book, page 108; preceding entries January twenty-third, 1873, one; four on the twenty-fourth, three on the twenty-fifth, one on the twenty-seventh, two on the twenty-eighth, one on the twenty-ninth, one on the thirtieth, following are two on the thirty-first.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give its date and amount if you can and please make the same a part of your deposition in this case if you have it and allow the notary to attach it thereto as an exhibit?

A. For this loan we gave our note dated Pittsburgh, January twenty-seventh, 1873, for $1,000.

Note handed to me by the witness and attached hereto as an exhibit, marked exhibit "D."

FRANK W. HUGHEY,
Notary Public.

Q I observe that the note you have just made a part of your deposition and marked exhibit "D," has endorsed on it the name of H. Heller, please state if you know in whose hand-writing is said endorsement?

A. It is in Mr. Heller's hand-writing.

Q. Why does said note bear a different date from the entry in the book and how does it happen that the amounts named in the note and entry are not the same?

A. Because we sent the note by mail to Philadelphia, it took the difference in the dates until the money reached us. The difference of the two amounts was deducted for discount.

Q. Please refer to your books and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. February fifth, 1873, $970.

Q. What is the exact language of the entry as it appears on the book?

A. "February the fifth, 1873, H. Heller, note discount, $970."

Q. Give the name of the book and number of page where said entry is found and the dates of all other entries on said page?

A. First cash-book, page 110; preceding entries, four on the first of February, 1873, three on the third, five on the fourth, four on the fifth; following, four on the sixth, three on the seventh, three on the eighth, two on the tenth, three on the eleventh, six on the twelfth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, please make the same a part of your deposition if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this loan we gave a note, but which is not in my possession any more for the reason above stated.

Q. What was the amount of such note?

A. $1,000.

Q. Why is it the amount of the note and entry are not the same?

A. The difference was deducted for discount.

Q. Please refer to your book and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. May twelfth 1873, $1,000.

Q. What is the exact language of the entry as it appears in the book?

A. "May 1873, 12, H. Heller, $1,000.

Q. Give the name of the book and number of the page where said entry is found and the dates of all other entries on said page, stating first those which precede and next those which follow it?

A. First cash-book, page 126; preceding entries, one on the first, one on the second, three on the third, four on the fifth, seven on the sixth, three on the seventh, two on the eighth, ten on the ninth, and ten on the tenth; following, one on the twelfth, five on the thirteenth, six on the fourteenth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this amount we gave our note dated Pittsburgh, May ninth, 1873, on sixty days.

Note handed to me by the witness and attached hereto as an exhibit, marked exhibit "E."

FRANK W. HUGHEY,
Notary Public.

Q. I observe that said note marked exhibit "E" is endorsed H. Heller, in whose hand-writing is such endorsement?

A. In Mr. Heller's.

Q. Please refer to your book and give the amount and date of the next money received by Schwed & Newhouse from H. Heller, as a loan?

A. May fourteenth, 1873, $950.

Q. Give the exact language of the entry as it appears on the book?

A. "May fourteenth, 1873, H. Heller, $950."

Q. Give the name of the book and number of the page where said entry is found, and the dates of all other entries on said page?

A. First cash-book, page 128; preceding entries, one on the fourteenth; following entries, four on the fifteenth, two on the sixteenth, two on the seventeenth, one on the nineteenth, five on the twentieth, six on the twenty-first, two on the twenty-second, eight on the twenty-third and four on the twenty-fourth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness, if so, state what, give its date and amount if you can, and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this amount we gave our note dated Pittsburgh, May the ninth, 1873, on ninety days, for $1,000.

Note handed to me by the witness and attached hereto as an exhibit, marked exhibit "F." FRANK W. HUGHEY,
Notary Public.

Q. In whose hand-writing is the name of H. Heller on the back of that note?

A. In Mr. Heller's.

Q. I observe that exhibits "E" and "F" are both dated May the ninth, 1873, for $1,000 each, one of them at sixty days and the other at ninety days, please state whether or not they were executed as parts of one transaction, and whether or not the moneys you say were received by Schwed & Newhouse on May twelfth and fourteenth, 1873, together made up the amount realized by Schwed & Newhouse from said notes?

Q. They were executed as a part of one transaction and the money realized on them the twelfth and fourteenth.

Q. The amount you received then from Mr. Heller upon which said notes were based was $1,950, was it not?

A. It was.

Q. Why do said notes bear a date different from the entries in the book, and how does it happen that the sum of the entries is not the same as the sum of the notes?

A. The difference is caused by the deduction of discount for both notes.

Q. Please refer to your book and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. July twenty-six, 1873, $1,950.

Q. Give the exact language of the entry as it appears on the book?

A. "July 26, 1873, H. Heller, $1,950."

Q. Give the name of the book and number of the page where said entry is found and the date of all other entries on said page?

A. First cash-book, page 140; preceding entries, one on the fourteenth of July, 1873, three on the fifteenth, five on the sixteenth, three on the seventeenth, three on the eighteenth, one on the twenty-first, six on the twenty-second, two on the twenty-third, one the twenty-fifth, one on the twenty-fourth, two on the twenty-fifth, two on the twenty-sixth; following, one on the twenty-sixth, one on the twenty-eighth, one on the twenty-second, and ten on the twenty-ninth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give its date and amount, if you can, and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For the amount we gave our notes dated Pittsburgh, July twenty-second, 1873, on two and three months respectively, and for $1,000 each.

Notes handed me by witness and attached hereto as an exhibit and marked exhibit "G" and "H?"

FRANK W. HUGHEY,
Notary Public.

Q. In whose hand-writing is the name of H. Heller endorsed on said exhibits "G" and "H"?

A. In Mr. Heller's.

Q. Why do said notes bear a different date from the entry in the book and why is the sum of the notes different from the amount of the entry?

A. The difference of date is caused from the time we sent the notes to Philadelphia, until the money reached us and the difference of amounts was deducted for discount.

Q. Please refer to your book and give the amount and date of the next moneys received by Schwed & Newhouse from H. Heller as a loan?

A. January twenty-seventh, 1874, $1,950.

Q. Give the exact language of the entry as it appears on the book?

A. January twenty-seventh, 1874, H. Heller, discount $1,950.

Q. Give the name of the book and the number of the page where said entry is found and the dates of all other entries on said page?

A. First cash-book, page 168; preceding entries, January twentieth 1874, one, twenty-first one, twenty-second five, twenty-third one, twenty-sixth one, twenty-seventh two; following entries, twenty-eighth two, twenty-ninth two, twenty-seventh one, thirtieth one, thirty-first three, twenty-second one and thirty-first one.

Q. Did Schwed & Newhouse execute and deliver to H. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount if you can, and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this amount we gave two notes dated Pittsburgh, January, twenty-sixth, 1874, at sixty and ninety days, respectively, $1,000 each.

Notes handed to me by witness and attached hereto, marked exhibits "K" and "L."

FRANK W. HUGHEY,
Notary Public.

Q. In whose hand-writing is the name of H. Heller which appears on the backs of exhibits "K" and "L."

A. In Mr. Heller's.

Q. Why is it that the sum of said notes is different from the amount of said entry?

A. The deduction is caused by discount.

Q. Please refer to your books and give the date and amount of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. May sixteenth, 1874, $1,950.

Q. Give the exact language of the entry as it appears on the book?

A. "May 16th, 1874; H. Heller, discount, $1,950."

Q. Give the name of the book and number of the page where said entry is found and the dates of all other entries on said page?

A. First cash-book, page 182; preceding entries, two on the first, two on the second, three on the fourth, three on the fifth, two on the sixth, three on the seventh, three on the ninth, one on the twelfth, two on the thirteenth, one on the fourteenth, one on the fifteenth, one on the sixteenth; following entries, seven on the eighteenth, one on the nineteenth, three on the twentieth and one on the twenty-first, May, 1874.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a

note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, and make the same a part of your deposition if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this loan we gave two notes, one of which is dated Pittsburgh May sixteenth, 1874, on two months for $1,000, the other is missing.

Note handed to me by witness and attached hereto, marked exhibit "M."

FRANK W. HUGHEY,
Notary Public.

Q. Can you state the date and amount of the other of said notes?

A. I cannot, not having it in my possession.

Q. Was it for the same amount as exhibit "M?"

A. It was.

Q. In whose hand-writing is the name of H. Heller which appears on the back of said exhibit "M?"

A. In Mr. Heller's.

Q. Why is it that the sum of said notes and the amount of said entry are not the same?

A. The amount short is for discount.

Q. Please refer to your books and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. September ninth, 1874, $960.67.

Q. Give the exact language of the entry as it appears on the book?

A. September the ninth, 1874, H. Heller, $960.67.

Q. Give the name of the book and the number of the page where said entry is found and the dates of all other entries on said page?

A. First cash-book, page 196; September the ninth, 1874; preceding items, two on the first, two on the second, one on the first, one on second, two on the third, two on the fourth, two on the fifth, two on the eighth, five on the ninth; following this are two on the tenth, and one on the twelfth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so give its date and amount if you can, and please make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this amount we gave a note for $1,000, which is missing.

Q. Have you made search for said note and also for said missing note of the loan of May sixteenth, 1874, referred to, where they would be likely to be found if in possession of yourself or Schwed & Newhouse, and were you able to find them?

A. I made search but could not find them.

Q. How does it happen that the amount of the note given for last mentioned loan and of the entry in the book are not the same?

A. The amount deducted is for discount.

Q. Please refer to your books and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. February twelfth, 1875, $1,000; February thirteenth, $975.

Q. Give the exact language of said entries as they appear on the book?

A. February twelfth, 1875, $1,000; February thirteenth, 1875, $975."

Q. Give the name of the book and number of the page where said entries are found and the dates of all other entries on said page?

A. First cash-book, page 214; preceding entries of February twelfth, 1875, three on the first, one on the third, three on the fourth, one on the fifth, one on the tenth, two on the eleventh; following one on the thirteenth; the one on the thirteenth is between the entries of the twelfth and thirteenth; following the thirteenth is one on the the fifteenth, one on the seventeenth, one on the eighteenth, one on the nineteenth, one on the twenty-third and one on the twenty-eighth.

Q. Do said amounts entered February twelfth and thirteenth, constitute parts of one loan?

A. They do.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give the dates and amount, if you can, make the same a part of your deposition if you have it, and allow the notary to attach it thereto as an exhibit?

A. For these amounts we gave two notes $1,000 each, one of which is dated Pittsburgh, February twelfth, 1875, the other is missing.

Note handed to me by witness and attached hereto marked exhibit "N."

FRANK W. HUGHEY,
Notary Public.

Q. Have you made search for said missing note where it would be likely to be found if in the possession of yourself or Schwed & Newhouse, if so, with what result?

A. I have searched for it but could not find it.

Q. Please examine the name of H. Heller, on the back of exhibit "N," and state who wrote it?

A. It is Mr. Heller's hand-writing.

Q. Why is it that the sum of said notes and the sum of said entries are not the same?

A. The amount deducted was for discount.

Q. Please refer to your books and state the date and amount of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. March tenth, 1875, $1,500; March thirteenth, 1875, $441.40.

Q. Give the exact language of said entries as they appear on the book?

A. March tenth, 1875, H. Heller, $1,500; March thirteenth, 1875, H. Heller, balance of notes, $441.40.

Q. Do the amounts of said entries together constitute one loan?

A. They do.

Q. Give the name of the book and number of page where said entries are found and the dates of all other entries on said page?

A. First cash-book, page 216; preceding entries of March tenth, one on the first, one on the third, two on the fourth, one on the fifth, one on the sixth, one on the ninth, two on the tenth; following entries, one on the eleventh, one on the twelfth; these last items are between the two amounts; the following entries are one on the fifteenth, January twenty-one, one; March fifteenth, one; sixteenth, one; nineteenth, one; twentieth, two;

twenty-third, one; twenty-fourth, one; the second, four entries, twenty-ninth, one; thirtieth one, thirty-first one.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give its date and amount if you can, make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For these two amounts we gave our notes of $1,000 each which are missing.

Q. Have you made search for said notes where they would be likely to be found if in the possession of yourself or of Schwed & Newhouse, if so, with what result?

A. I have searched for them but did not find them.

Q. Will you refer to your books and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. May seventeenth, 1875, H. Heller, $985.

Q. Give the exact language of the entry as it appears on the book?

A. May seventeenth, 1875, H. Heller, $985.

Q. Give the name of the book and the number of the page where said entry is found and the dates of all other entries on said page.

A. First cash-book, page 220; entries preceding May seventeeth, 1875; two on the first, one on the third, one on the fourth, three on the fifth, one on the first, one on the sixth, two on the thirteenth, one on the fourteenth, one on the fifteenth, one on the eighteenth, one on the seventeenth; following, one on the nineteenth, two on the twenty-sixth, one on the twenty-seventh, two on the thirty-first.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount if you can, make the same a part of your deposition in this case if you have it and allow the notary to attach it thereto as an exhibit?

A. For the amount we gave a note for $1,000, which is missing.

Q. Have you made the same search for said note as you did for the other missing notes and if so with what result?

A. I searched for it but could not find it.

Q. In the case of this loan and also of the next preceding loan referred to by you why is it that the rmount of the notes is not the same as the amount entered on your books as received?

A. The amount deducted is for discount.

Q. Please refer to your book and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan.

A. May twenty-fourth, 1876, $1,454.84.

Q. Give the exact language of the entry as it appears on the book?

A. May twenty-fourth, 1876, H. Heller, discount $1,454.84.

Q. Give the name of the book and number of the page where said entry is found and the dates of all other entries on said page.

A. First cash-book, page 250; entries preceding May twenty-fourth, 1876, two on the first, two on the third, one on the fifth, one on the sixth, one on the eighth, one on the ninth, one on the third, one on the ninth, one on the eleventh, two on the fifteenth, two on the sixteenth, one on the twelfth, two on the eighteenth, one on the nineteenth, one on the twentieth, two on the twenty-second, three on the twenty-third, two on the twenty-fourth; following, one on the twenty-fourth, one on the twenty-fifth, one on the twenty-seventh, and three on the thirty-first.

Q. Did Schwed & Newhouse execute and deliver to Mr Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this amount we gave three notes dated Pittsburgh, May, twenty- second, 1876, on two, three and four months; $500.00 each.

Notes handed to me and attached hereto as exhibits "O" "P" and "Q."

FRANK W. HUGHEY,
Notary Public.

Q. Why do said notes bear a different date from the entries in the book and how does it happen that the sum of said notes differs from the amount of said entry.

A. The dates of the notes are the time we executed them, and the entries in our books are when we received the money; the difference in the amounts was deducted for discount.

Q. Please refer to your book and give the amount and date of the next money received by Schwed & Newhouse from H. Heller, as a loan?

A. April, nineteenth 1877, $595.

Q. What is the exact language of the entry as it appears on the book?

A. April nineteenth, 1877, $595.

Q. Give the name of the book and number of the page where said entry is found, and the dates of all other entries on said page?

A. Second cash-book, page 24; preceding entries of April nineteenth, 1877, one on the first, three on the third, five on the fourth, one on the seventh, two on the ninth, one on the tenth, two on the eleventh, one on the eighteenth; following, one on the twentieth, two on the twenty-first, two on the twenty-fourth, two on the twenty-fifth, one on the twenty-third, two on the twenty-seventh, one on the thirtieth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so state what, give its date and amount, if you can, make the same a part of your deposition, if you have it, and allow the notary to attach it thereto as an exhibit?

A. For this amount we gave our note dated Pittsburgh, April eighteenth, 1877, for $595.

Note handed to me by witness and attached hereto and marked exhibit "R."

FRANK W. HUGHEY,
Notary Public.

Q. Please refer to your books and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. September eleventh, 1877, $1,468.25.

Q. Give the exact language of the entry as it appears on the book?

A. September eleventh, 1877, H. Heller, discount, $1,468.25.

Q. Give the name of the book and number of the page where said entry is found and the date of all other entries on said page?

A. Second cash-book, page 34; preceding entries September

eleventh, 1877, one on the first, one on the third, two on the sixth, one on the eleventh; following, two on the seventh, one on the fifteenth, one on the eighteenth, on the twentieth, two on the twenty-eighth, one on the twenty-ninth, one on the twenty-eighth, two on the twenty-second, one on the twenty-fifth, one on the twenty-sixth, two on the twenty-fourth, two on the twenty-eighth, one on the thirtieth, one on the fourteenth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, and make the same a part of your deposition, and an exhibit, if you have it?

A. For this amonnt we gave three notes dated Philadelphia, August twenty-seventh, 1877, on two, three and four months, $500 each.

Notes handed me by witness and attached hereto and marked exhibit "S" "T" and "U."

FRANK W. HUGHEY,
Notary Public.

Q. How does it happen that said notes are dated at Philadelphia?

A. Because I was there at the time.

Q. I observe that said notes marked exhibits "S" "T" and "U" are endorsed H. Heller, and M. M. Newman & Co.; in whose hand-writing are said endorsements, if you know.

A. H. Heller's endorsement is in his own hand-writing, the other endorsement I do not know.

Q. Why do said notes have a different date from the entry in the book and how does it happen that the sum of said notes differs from the amount named in the entry?

A. The dates of the notes are when I executed them, the entries in the book were made when we received the money. The amount deducted was for discount.

Q. Please refer to your book and give the amount and date of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. March the first, 1878, $972.62.

Q. Give the exact language of the entry as it appears in the book?

A. March the first, 1878, H. Heller, $972.62.

Q. Give the name of the book and number of the page where said entry is found and the dates of all other entries on said page.

A. Second cash-book, page 46; preceding item of March the first is one on the first; following, one on the second, three on the fourth, one on the first, two on the sixth, one on the eighteenth, one on the twentieth, two on the twenty-fifth, one on the twenty-seventh, one on the twenty-ninth, and two on the thirtieth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, and make the same a part of your deposition, and an exhibit, if you have it?

A. For this amount we gave two notes dated Pittsburgh, February eighteenth, 1878, on three and four months and for $500 each.

Notes handed to me by witness and attached hereto as exhibits and marked exhibits "V" and "W."

FRANK W. HUGHEY,
Notary Public.

Q. In whose hand-writing is the name of H. Heller which appears on the back of said notes marked "V" and "W?"

A. In Mr. Heller's hand-writing.

Q. Why do said notes bear a different date from the entry in the book and why does the sum of said notes differ from the amount named in the entry?

A. The notes were dated when I executed them, the entry in the book was made when I received the money, the amount deducted was for discount.

Q. Please refer to your book and give the date and amount of the next money received by Schwed & Newhouse from H. Heller as a loan?

A. April twenty-sixth, 1878, $1,939.17.

Q. Give the exact language of the entry as it appears on the book?

A. April twenty-sixth, H. Heller, discount $1,939.17.

Q. Give the name of the book and number of the page where said entry is found and the dates all other entries on said page?

A. Second cash-book, page 50; preceding entries of April twenty-sixth, 1878, one on the first, two on the third, one on the fourth, one on the fifth, one on the eleventh, one on the twelfth, one on the thirteenth, one on the second, one on the third, one on the sixth, two on the ninth, one on the tenth, one the eleventh, tow on the seventeenth, one on the nineteenth, one on the twenty-third, one on the twenty-fourth; following, two on the tenth, one on the twelfth, one on the thirtieth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, make the same a part of your deposition, and an exhibit if you have it?

A. For this amount we gave two notes dated Philadelphia, April twenty-third, 1878, on three and four months, $1,000 each.

Notes handed to me by witness and attached hereto as exhibits and marked exhibits "X" and "Y."

FRANK W. HUGHEY,
Notary Public.

Q. In whose hand-writing is the name of H. Heller endorsed on said notes marked exhibits "X" and "Y"?

A. In Mr. Heller's.

Q. Why are said notes dated at Philadelphia?

A. Because I was there when I executed them.

Q. Why do said notes bear a different date from the entry in the book and why does the sum of said notes differ from the amount named in the entry.

A. The notes were dated when I executed them; the money was entered on the book when I received it; the amount deducted was for discount.

Q. Please refer to your book and state when the next loan by Mr. Heller to Schwed & Newhouse was made and give its amount?

A. August the tenth, 1878, $450.

Q. Give the exact language of the entry as it appears on the book?

A. August tenth, 1878, Herman Heller, loan, $450.

Q. Give the name of the book and number of the page where said entry is found and the dates of all other entries on said page?

A. Second cash-book, page 60; entries preceding August tenth, 1878, three one the first, one on the third, one on the eighth; following, one on the twelfth, one on the thirteenth, one on the fifteenth, one on the sixteenth, one on the nineteenth,, one on the twenty-first, two on the twenty--fourth, one on the twenty-sixth, two on the twenty-eighth, one on twenty-ninth, three on the thirtieth.

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, and make the same a part of your deposition and an exhibit, if you have it?

A. We did not execute any paper of indebtedness but returned the same amount, $450, on August thirteenth, 1878.

Q. Please refer to your book and state when the next loan was made by Mr. Heller to Schwed & Newhouse, and give the amount of money they received from him?

A. February eleventh, 1879, $500; February the thirteenth, $2,450.47.

Q. Did said amounts constitute parts of one loan?

A. They did.

Q. Give the exact language of said entry as it appears on the book?

A. February the eleventh, 1879, H. Heller, loan, $500; February the thirteenth, 1879, H. Heller, loan, $2,450.47.

Q. Give the name of the book and the number of the page where said entries are found and the dates of all other entries on said page?

A. Second cash-book, page 76; preceding entries, February eleventh, 1879, one on the first, one on the fourth, three on the fifth, one on the seventh, one on the eighth, one on the tenth; between the two entries two on the eleventh, one on the thirteenth; following the last entry, one on the eighteenth, one on the twenty-fourth, one on the twenty-fifth, one on the eightheenth, one on the twenty-fourth, one on the twenty-fifth, two on the twenty-sixth, and two on the twenty-eighth.

Q. Did Schwed & Newhouse execute and deliver a note or other evidence of indebtedness for said loan, if so, state what, give its date and amount, if you can, and make the same a part of your deposition as an exhibit if you have it?

A For this amount we gave our note for $3,000, dated February fourth, 1879.

Note handed to me by witness and attached hereto as an exhibit marked exhibit "Z." FRANK W. HUGHEY,
Notary Public.

Q. In whose hand-writing is the name of H. Heller, endorsed on said note marked exhibit "Z."

A. In Mr. Heller's.

Q. Why do said notes bear a different date from the entries in the book, and why does the amount of said note differ from the sum of said entries?

A. The note was dated when I executed it; the entries were made when we received the money; the amount deducted was for discount.

Not being able to complete the taking of said depositions for the reason that the hour of adjournment, viz. six o'clock, has arrived, I adjourn the further taking of the same until to-morrow morning, then to be con-

tinued at the place and between the hours mentioned in the annexed notice.

FRANK W. HUGHEY,
Notary Public.

Pursuant to adjournment, on this eighth day of February, A. D. 1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of George W. DeCamp, number 160 Fourth avenue, Pittsburgh, Pennsylvania, I continued the taking of said deposition, as follows:

CROSS-EXAMINATION OF MR. E. SCHWED, CONTINUED.

Q. Please refer to your books and state the amount of the next loan by H. Heller to Schwed & Newhouse, and state when it was made?

A. May twenty-third, 1879, $2,000; May twenty-ninth, $1,000; June the second, 1879, $86.37; June the seventh, $80.00; June the ninth, $1,000; June twenty-first, $368.40.

Q. Please state the whole amount of the loan made by H. Heller to Schwed & Newhouse, in which the amounts that you have named figure?

A. The whole amount of the loan was $5,000.

Q. Please state how that $5,000 was made up?

A. Partly in cash received from Heller, partly by his drafts on Pittsburgh which we have collected, partly by interest deducted on the amount, and a note and protest of Castelmyer, which H. Heller had previously discounted for us, but was not paid and which we had to make good.

Q. Give the exact language of the first entry of cash named on account of said loan to which you have referred?

A. May twenty-third, 1879, H. Heller, $2,000.

Q. Give the name of the book and number of the page where said entry is found and if any other of said items appears on said page give the exact language thereof?

A. Second cash-book, page 84, second entry May twenty-ninth, 1879, H. Heller, $1,000.

Q. Give the date of all other entries on said page?

A. Preceding entries May twenty-third, 1879, and one on the first, two on the second, two on the third, one on the fifth, one on the seventh, one on the eighth,, two on the ninth, one on the eighth, one on the ninth, two on the twelfth, one on the fifteenth, one on the sixteenth, one on the seventeenth, two on the nineteenth, one on the twentieth; following first item one on the twenty-sixth, one on the twenty-seventh, one on the first, one on the third, one on the eighth, two on the eighteenth, one on the twenty-fourth, one on the twenty-ninth; between the first and second entry are nine of said entries, entries following the second entry are three on the thirty-first.

Q. What is the exact language of the entry of the next of said items to which you refer?

A. June the second, 1879, H. Heller, draft on Rosenthall, $86.37?

Q. Do the entries of any other of the items referred to appear on the same page with the one just quoted, if so give their exact language?

A. The second entry on the same page reads "June the first, 1879, H. Heller, draft on Mrs. Pillgrim, $80.00." The fourth entry on the same page reads "June twenty-first, H. Heller, balance on note, $368.40." The third entry reads "June the ninth, H. Heller, $1,000."

Q. Give the name of the book and number of the page where the

four entries are found and the dates of all other entries on said page in the order in which they come?

A. Second cash-book, page 88; are one on the first, one on the second, three on the third, one on the fourth, one on the sixth, two on the ninth, one on the ninth, one on the eleventh, one on the twelfth, one on the seventeenth, three on the eighteenth, one on the twenty-first, one on the eleventh, one on the tenth, one on the twelfth, one on the sixteenth, one on the eighteenth, two on the twenty-fourth, one on the twenty-fifth, two on the twenty-sixth, one on the twenty-eighth, one on the thirtieth, two on the second, one on the third.

Q. Were the drafts on Rosenthall and Mrs. Pillgrim the drafts on Pittsburgh to which you referred in a previous answer?

A. They were.

Q. Did Schwed & Newhouse receive the money on said drafts, if so, how much?

A. They did; the amount was from Mr. Rosenthall $86.37; from Mrs. Pillgrim, $80.00.

Q. Do you know why Mr. Heller drew those drafts on Rosenthall and Mrs. Pillgrim?

A. Those parties were customers of his and owed him those amounts?

Q. Did Schwed & Newhouse execute and deliver to Mr. Heller a note or other evidence of indebtedness for said loan of $5,000, if so, state what, give its date and amount, if you can, and make the same a part of your deposition, and an exhibit, if you have it?

A. For that loan we gave our note dated, Philadelphia, May the twenty-first, 1879.

Note handed me by witness and attached hereto as an exhibit marked exhibit "No. 1."

FRANK W. HUGHEY,
Notary Public.

Q. How does it happen that said note is dated at Philadelphia?

A. Because I was there at the time I executed it.

Q. In whose hand-writing are the names of H. Heller and Simon Muhr, which appear on the back of said note marked exhibit "No. 1."

A. The name of Mr. H. Heller is in his own hand-writing, the other one I don't know.

Q. Why is it that the amount of said note is different from the sum of the entries of cash received from Mr. Heller, and the drafts and cash received from the drafts on Rosenthall and Mrs. Pillgrim?

A. Because several other items were deducted from the amount of loan?

Q. State what those other items are?

A. January twenty-first, 1879, six per cent. interest on $5,000 six months, $150; six per cent. interest on $1,000, due February thirteenth, $60; seven per cent. interest on $3,000, due May the first, $53.67; Castlemyer's note and protest, due May the sixteenth, $201.56.

Q. In what book and under what date do the items you have just given appear?

A. In the discount book, June twenty-first, 1879.

Q. Do any other entries relative to this loan appear in said book, if so, state on what page, and give the exact language of all such entries as they appear in said book?

A. There are; the page is not numbered; it is headed 1879; the entries are "May the seventeenth, by cash, $600," "May the nineteenth, $206.48, by discount, $17.78;" "June the second, by cash draft on—" through these last words, June the second, a line is drawn.

Q. Do the entries you have just given relate to the $5.000 loan of Mr. Heller?

A. They do not.

Q In my previous question, I asked you whether any other entries relative to said loan appear in said book, if so to state on what page and to give the exact language of all such entries as they appear in the book. Will you please do so now?

A. The page headed 1879 is not numbered; the other items are: "May twenty-third, by cash, $2,000;" "May twenty-ninth, by cash, $1,000;" June second, by cash draft on Rosenthall, $86.37;" "June the seventh, by cash draft on Mrs. Pillgrim, $80;" "June the ninth, by cash, $1.000;" "June the twenty-first, by cash, $368.40."

Q. Are there any other entries in said book, on any other page, relative to said loan, if so, state on what page and give the exact language of such entries?

A. There is another entry relative to that loan on the other side of the book headed May, the page not being numbered; the entry reads, "May the twenty-first, 1879; the same our note on six months, $5,000."

Q. To what do the words "the same" refer?

A. To the name of H. Heller.

Q. Does the name of Mr. Heller appear on said page, if so, where?

A. It does, and on the top of the page.

Q. Are there any other items pertaining to Mr. Heller on said page between his name and the words "the same," if so, state how many?

A. There are eight items between.

Q. Why does said $5,000 note bear a different date from the entries in your books to which you have referred?

A. The date of the note is when we executed it, the other items are dated when they were entered on the books.

Q. Please refer to your book and give the date and amount of the next loan by Mr. Heller to Schwed & Newhouse?

A. This was the last loan.

Q. Were any of the evidences of indebtedness, to which you have referred in your testimony as having been given by Schwed & Newhouse, to H. Heller for loans, at any time renewed, if so, state as near as you can which of said evidences of indebtedness were so renewed, and give the date and amount of such renewals, as near as you can, and if you have them make them a part of your deposition and allow them to be filed as exhibits; in answering this question, if you file any renewals as exhibits, state of what note each exhibit is a renewal?

A. Several of these notes were renewed, but how often I cannot tell at this late date. I have a few of those renewals in my possession; note dated Pittsburgh, February eighteenth, 1878, for $500, at three months was renewed so far as I know three times; first renewal dated Pittsburgh, May the eighteenth, 1878, second renewal Pittsburgh, August nineteenth, 1878; third renewal dated Pittsburgh, November nineteenth, 1878, for $500 each.

Said nenewals are marked exhibits "number two," "number three" and "number four," respectively.

Of the original note, dated February eighteenth, 1878, at four months

for $500, I have in my possession three renewals, dated, respectively, Pittsburgh, June the eighteenth, 1878, September the eighteenth, 1878, December the eighteenth, 1878, for $500 each.

Said renewals are marked exhibits numbers "five," "six" and "seven," respectively.

For original note, dated Philadelphia, April twenty-third, 1878, for $1,000, in three months, I have in my possession, two renewals, dated respectively, Pittsburgh, July twenty-third, 1878, and October twenty-third, 1878, for $1,000 each.

Said renewals are marked exhibits "eight" and "nine."

For original note, dated Philadelphia, April twenty-third, 1878, for $1,000, I have two renewals, dated, respectively, August twenty-third and November twenty-third, 1878, for $1,000 each.

Said renewals are marked exhibts numbers "ten" and "eleven."

For original note, dated Pittsburgh, February fourth, 1879, for $3,000, I have in my possession two renewals, dated, respectively, May the third and August the fourth, 1879, for $3,000, each.

Said renewals are marked exhibits numbers "twelve" and "thirteen."

Q. Are those enumerated and filed with your depositions the only renewals in the possession of yourself or of Schwed & Newhouse?

A. They are.

Q. In whose hand-writing is the name of H. Heller on the back of said renewals, marked exhibits number five, number eight, number eleven, number twelve and number thirteen?

A. In Mr. Heller's.

Q. Do you remember to have executed any other renewals besides those already referred to?

A. I can only remember the last renewal of the $3,000 note.

Q. About when, as near as you can recollect, was said last renewal made?

A. I can see from the inspection of the previous renewal, November the fourth, 1879.

Q. In your examination in chief, you stated that Schwed & Newhouse have since they commenced business paid H. Heller, in cash and otherwise, in all the gross sum of $21,669.32, does that amount embrace all that Heller has been paid by Schwed & Newhouse either in money or otherwise?

A. It does.

Q. How much of that sum, if any, was paid Heller on account of interest and how much on the principal of said loans?

A. The amount for interest we paid was $1,624.32. The amount of principal we paid was $20,045.

Q. What is the aggregate amount of the loans to which you have referred in your testimony as made by Heller from time to time to Schwed & Newhouse?

A. $34,045.

Q. Please state the difference between the aggregate amount of said loans and the aggregate amount of the payments by Schwed & Newhouse on the principal thereof?

A. There are; the page is not numbered; it is headed 1879; the entries are "May the seventeenth, by cash, $600," "May the nineteenth, $206.48, by discount, $17.78;" "June the second, by cash draft on—" through these last words, June the second, a line is drawn.

Q. Do the entries you have just given relate to the $5.000 loan of Mr. Heller?

A. They do not.

Q In my previous question, I asked you whether any other entries relative to said loan appear in said book, if so to state on what page and to give the exact language of all such entries as they appear in the book. Will you please do so now?

A. The page headed 1879 is not numbered; the other items are: "May twenty-third, by cash, $2,000;" "May twenty-ninth, by cash, $1,000;" June second, by cash draft on Rosenthall, $86.37;" "June the seventh, by cash draft on Mrs. Pillgrim, $80;" "June the ninth, by cash, $1.000;" "June the twenty-first, by cash, $368.40."

Q. Are there any other entries in said book, on any other page, relative to said loan, if so, state on what page and give the exact language of such entries?

A. There is another entry relative to that loan on the other side of the book headed May, the page not being numbered; the entry reads, "May the twenty-first, 1879; the same our note on six months, $5,000."

Q. To what do the words "the same" refer?

A. To the name of H. Heller.

Q. Does the name of Mr. Heller appear on said page, if so, where?

A. It does, and on the top of the page.

Q. Are there any other items pertaining to Mr. Heller on said page between his name and the words "the same," if so, state how many?

A. There are eight items between.

Q. Why does said $5,000 note bear a different date from the entries in your books to which you have referred?

A. The date of the note is when we executed it, the other items are dated when they were entered on the books.

Q. Please refer to your book and give the date and amount of the next loan by Mr. Heller to Schwed & Newhouse?

A. This was the last loan.

Q. Were any of the evidences of indebtedness, to which you have referred in your testimony as having been given by Schwed & Newhouse, to H. Heller for loans, at any time renewed, if so, state as near as you can which of said evidences of indebtedness were so renewed, and give the date and amount of such renewals, as near as you can, and if you have them make them a part of your deposition and allow them to be filed as exhibits; in answering this question, if you file any renewals as exhibits, state of what note each exhibit is a renewal?

A. Several of these notes were renewed, but how often I cannot tell at this late date. I have a few of those renewals in my possession; note dated Pittsburgh, February eighteenth, 1878, for $500, at three months was renewed so far as I know three times; first renewal dated Pittsburgh, May the eighteenth, 1878, second renewal Pittsburgh, August nineteenth, 1878; third renewal dated Pittsburgh, November nineteenth, 1878, for $500 each.

Said nenewals are marked exhibits "number two," "number three" and "number four," respectively.

Of the original note, dated February eighteenth, 1878, at four months

for $500, I have in my possession three renewals, dated, respectively, Pittsburgh, June the eighteenth, 1878, September the eighteenth, 1878, December the eighteenth, 1878, for $500 each.

Said renewals are marked exhibits numbers "five," "six" and "seven," respectively.

For original note, dated Philadelphia, April twenty-third, 1878, for $1,000, in three months, I have in my possession, two renewals, dated respectively, Pittsburgh, July twenty-third, 1878, and October twenty-third, 1878, for $1,000 each.

Said renewals are marked exhibits "eight" and "nine."

For original note, dated Philadelphia, April twenty-third, 1878, for $1,000, I have two renewals, dated, respectively, August twenty-third and November twenty-third, 1878, for $1,000 each.

Said renewals are marked exhibts numbers "ten" and "eleven."

For original note, dated Pittsburgh, February fourth, 1879, for $3,000, I have in my possession two renewals, dated, respectively, May the third and August the fourth, 1879, for $3,000, each.

Said renewals are marked exhibits numbers "twelve" and "thirteen."

Q. Are those enumerated and filed with your depositions the only renewals in the possession of yourself or of Schwed & Newhouse?

A. They are.

Q. In whose hand-writing is the name of H. Heller on the back of said renewals, marked exhibits number five, number eight, number eleven, number twelve and number thirteen?

A. In Mr. Heller's.

Q. Do you remember to have executed any other renewals besides those already referred to?

A. I can only remember the last renewal of the $3,000 note.

Q. About when, as near as you can recollect, was said last renewal made?

A. I can see from the inspection of the previous renewal, November the fourth, 1879.

Q. In your examination in chief, you stated that Schwed & Newhouse have since they commenced business paid H. Heller, in cash and otherwise, in all the gross sum of $21,669.32, does that amount embrace all that Heller has been paid by Schwed & Newhouse either in money or otherwise?

A. It does.

Q. How much of that sum, if any, was paid Heller on account of interest and how much on the principal of said loans?

A. The amount for interest we paid was $1,624.32. The amount of principal we paid was $20,045.

Q. What is the aggregate amount of the loans to which you have referred in your testimony as made by Heller from time to time to Schwed & Newhouse?

A. $34,045.

Q. Please state the difference between the aggregate amount of said loans and the aggregate amount of the payments by Schwed & Newhouse on the principal thereof?

A. $14,000.

Q. State whether or not said difference or balance of $14,000 is represented by said judgment notes of February and December, 1879, to which you have referred in your examination in chief?

A. It is.

Q. State whether or not said judgment notes and the indebtedness which they represent were still due and owing by Schwed & Newhouse to Mr. Heller when the judgments at Pittsburgh and Kansas City were confessed in his favor?

A. They were.

Q. Has any part of said indebtedness been paid to this day, besides the amount realized from the sheriff's sale at Pittsburgh?

A. It has not.

Q. In your examination in chief, you state that Mr. Heller had, from time to time, discounted for Schwed & Newhouse their customers notes to the amount of $5,312.83, was the money received from Mr. Heller by Schwed & Newhouse from such discounts or any part thereof included in or a portion of the money which you say was received from him by Schwed & Newhouse as loans?

A. It was not.

Q. Will you please examine your books and give the several dates at which Mr. Heller made such discounts, giving a list of the customers' notes discounted at each date and their respective amounts?

A. February twenty-second, 1876, note of Joseph Miller, due May eighteenth, 1876, $200; note of E. D. Schmauk, due May the twenty-fourth, $222.28; note of L. L. Ehrmann, due April the seventeenth, $350; note of L. L. Ehrmann, due May the seventeenth, $350; amounting in all to $1,122.28. August twelfth, 1876, note of L. L. Ehrmann, due October fourth, $250; note of Joseph Miller, due October fifth, $200; note of L. L. Ehrmann, due November fourth, $250; note of Joseph Miller, due November fifth, $282.10; note of Joseph Miller, due December fifth, $282.11; amounting together to $1,264.21. May the fifteenth, 1879, note of M. Hinkley, due August eleventh, $107; note of John A. Steeder, due August fifteenth, $100; note of W. Wilson, due August twenty-ninth, $102.47; note of Emil Young, due September the fourth, $101.66; note of John Brenner, due September twelfth, $101; note of C. Scharback, due September thirteenth, $100; note of Geo. E. Boehme, due September fifteenth, $100; note of L. Miller, due September eighteenth, $113.13; amounting in all to $824.26. July twelfth, 1879, note of Brown & Son, due September fifteenth, $100; note of Reuben Lyon, due September twenty-eighth, $100, interest on same note, $1.85; notes of L. C. Bullard, due October fifth, $100; note of Joseph Miller, due October sixth, $100; note of George E. Boehme, due October twenty-third, $100; note of C. F. Castlemyer, due November fourth, $150; note of C.Scharback, due November twelfth, $150; note of C. F. Castlemyer, due November fifteenth, $150; note of George E. Boehme, due November fifteenth, $100; amounting in all to $1,051.85. November thirteenth, 1879, note of L. Miller, due January first, 1880, $100; note of L. Miller, due February second, $133.83; note of M. Hinkley, due February eighth, $100; note of W. Wilson, due February sixteenth, $116.40; note of W. J. Sarver, due February eighteenth, $100; note of L. C. Bullard, due March tenth, $100; note of R. Lyon, due March eleventh, $100; note of C. F. Castlemyer, due March fourteenth, $200; note of Stender & Frandide, due March fourteenth, $100; amounting in all to $1,050.23.

Q. In giving said list did you refer to your books as requested, if

not, please state whether you have your books before you, and whether the entries therein are the same as those you have just given?

A. In giving said list I took the items from my statement which agrees with my books; which I have just compared with my books before me.

Q. In your examination in chief you stated that a part of the $21,669.32 paid Mr. Heller by Schwed & Newhouse was paid him by turning over to him certain of the customers' notes of Schwed & Newhouse; please state the times at which payments of that character were made and give a list of the customers' notes so turned over to him. In answering this question please refer to your books?

A. For our note dated Pittsburgh, April eighteenth, 1877, for $595, we gave the following customers' notes, August the twentieth, 1877:

Note on C. F. Castlemyer, due November sixteenth, $200; note on C. F. Castlemyer, due December sixteenth, $200; note on C. Scharback, due November twentieth, $200; amounting to $600; to which we charged Mr. Heller, August twenty-third, to cash $11.38; together $611.38. In payment for this amount he returned to us our note as stated and charged $16.38 for discount of those customers' notes by which this transaction was balanced. For note due January sixth, 1879, not in my possession any more, for $1,000, I gave the following customers' notes January sixteenth, 1879: Note of Emil Young due April thirteenth, $100; note on George E. Boehme, due April sixteenth, $200; note of Samuel Smith, agent, due May thirteenth, $100; note of C. F. Castlemyer, due May sixteenth, $200; note on Emil Young, due June thirteenth, $94.02; note of C. F. Castlemyer, due June sixteenth, $200; note of C. F. Castlemyer, due July sixteenth, $200; amounting to $1,094.02. In payment for these notes he charged us $39.75 for discount, returned to us note due January sixth, for $1,000; interest due on said $1,000, $25.83, balance $31.44.

Q. Did all of said customers' notes mentioned as turned over to Mr. Heller, in the transactions of January sixteenth, 1879, fall due within the year 1879?

A. They fell due in April, May, June, July, 1879.

Q. Were the customers' notes of Schwed & Newhouse, which passed into Mr. Heller's hands either by way of payment as you have mentioned or which were discounted by him from time to time as you have stated endorsed by Schwed & Newhouse, if so were any of said notes at any time protested for non-payment, so that Schwed & Newhouse were compelled to make good the payment thereof to Mr. Heller, if so state which of said notes and how was the payment thereof made good to him in each case?

A. The notes thus passed to Mr. Heller were all endorsed by us. Those that were returned to us not having been paid by the makers are note of L. L. Ehrman, for $350, due May seventeenth, 1876, which amount Mr. Heller deducted from his remittance received by us May twenty-fourth, 1876. Note of C. F. Castlemyer, due June sixteenth, 1879, was also returned to us amounting to $200 and protest fees $1.56; which amount Mr. Heller deducted from our loan of $5,000 June the twenty-first, 1879.

Q. Do you mean by your last statement that the loan of $5,000 was made June the twenty-first, 1879, or that the deduction for the Castlemyer note was made at that (date) time?

A. The deduction for said note was made at that time.

Q. By which of the notes filed with your deposition if any, is the $5,000 loan, to which you refer, represented?

A. By the note dated Philadelphia, May twenty-first, 1879, for $5,000.

Q. State whether or not the entries in your books to which you have referred in giving your testimony were made in the usual and regular course of business?

A. They were.

Q. Has Schwed & Newhouse at any time since they commenced business to the present time, had any business transaction of any character with Mr. H. Heller which is not recorded in the books which you have produced here?

A. No, sir.

Q. Were you present at the sheriff's sale of Schwed & Newhouse's stock in Pittsburgh, and if so, did you see a man there named H. C. Koerner?

A. I was present occasionally, but do not know such a man.

Q. Did you hear Mr. Gallagher, or Gallinger, state in the presence of yourself and Mr. Heller at the time of the sale to any person or persons, whatsoever, that he was buying in goods for a friend and pointing at the same time to Mr. Schwed?

A. I did not.

Q. Did you hear at any time during the sale Mr. Gallinger state to Mr. Koerner, or to any other person or persons, that it was foolish for them to bid, for they might sometime get into trouble of this kind themselves?

A. No, sir.

Q. Did you ever tell Mr. Koerner, or any other man who was present at the sale, to come around after the sale and you would fix it all right?

A. I did not.

Q. Is it true that "Heller and Schwed were at the sale acting in concord and in such a manner that no one else could buy?"

A. It is not.

Q. Is it true that the goods sold were solid gold goods?

A. No, sir,

Q. State what opportunity, so far as you know, the sheriff gave purchasers for examing the goods sold?

A. So far as I could observe every person present had the fullest opportunity to examine whatever they wished.

Q. Is it a fact that during said sale you were whispering to Mr. Heller when goods were put up, and that you would punch him in the ribs, crack your fingers and attract Heller's attention in various ways?

A. It is not.

Q. Is it true that the said Mr. Koerner called at your office after the sale, spoke to you and demanded from you a clock which he had purchased and that you refused to deliver it to him?

A. Ten days after the sale a man came to me and claimed a clock that he said he had bought at the sheriff's sale. I told him that I didn't know anything about it and that he had to see the sheriff, whom he says sold it to him.

Q. Are you acquainted with a man in Pittsburgh by the name of John Riesick?

A. I am not.

Q. Is it true that at said sale "one man bought something and gave it to Schwed who put it in his coat pocket."

A. It is not.

RE-EXAMINATION BY COL. BOTSFORD.

Q. How long had you been in possession of the stock when the clock above referred to was demanded?

A. I decline all answers not appertaining to the proof of the honesty of the debt to H. Heller.

Q. Who was in the store when you received possession?

A. I decline to answer.

Q. Did you receive possession from Mr. Cohen?

A. I decline to answer.

Q. When did Mr. Heller return to Philadelphia?

A. I don't know.

Q. Did he not return the evening or night after the sale?

A. I don't know.

Q. What became of the goods bought at the sale by Mr. Cohen?

A. I decline to answer.

Q. What became of the goods bought at the sale by your traveling agent Frempton, by Gallinger and by Kline?

A. I decline to answer.

Q. Was not the total amount of goods that went out of the stock at said sale the goods that were sold for $43.45, cash?

A. I don't know.

Q. Was not the total amount of goods that went out of the stock at said sale the goods that were sold for cash and the few dollars worth that were sold to persons in the sheriff's office, amounting in all to about $50.

A. I don't know.

Q. Why did you decline to answer the last two questions?

A. Because I don't know.

Q. Do you decline to answer the questions because you do know the facts?

A. No, sir.

Q. You stated in your cross-examination that no creditor had asked for a statement of your financial condition; did the commercial agency of R. G. Dun & Co., ever ask for such statement?

A. Not to my recollection, and if so we never gave one.

Q. If they asked one you refused to give it did you?

A. We thought it none of their business to know our affairs.

Q. When did this occur?

A. I don't know.

Q. What year was it according to your best recollection?

A. I don't know.

Q. Do you think it was in 1878 or 1879?

A. I don't know.

Q. Were Sussfield, Lorsch & Co., of New York, creditors of yours at the time your stock was seized?

A. I decline to answer.

Q. If they were have they been paid in whole or in part, or has a compromise been effected with them or a settlement of any kind made with them of their claim since the seizure of your stock?

A. I decline to answer.

Q. Has the claim of any other creditors of Schwed & Newhouse been paid in whole or in part, compromised, or in any manner settled since the seizure of your stock?

A. I decline to answer.

Q. Were any accounts of any kind due to Schwed & Newhouse ever assigned to defendant Heller, from 1871 to the present time?

A. No, sir.

Q. Were any bills receivable due Schwed & Newhouse from any of their customers assigned to Mr. Heller or transferred or delivered to him since January first, 1880?

A. No, sir.

Q. Have any accounts or notes of any kind been transferred, assigned, mailed or in any manner delivered by either yourself or Mr. Newhouse to Mr. Heller or to Mr. Cohen since January first, 1880?

A. No, sir.

A. Have any moneys, either in the form of currency, checks, drafts, or otherwise, been paid, deposited or delivered in any manner to Mr. Heller or to Mr. Cohen, his attorney, by either yourself or Mr. Newhouse since January first, 1880?

A. No, sir.

Q. In giving your cross-examination, you have had in your hands and used in connection with your books a statement in writing, have you not?

A. I had some statements.

Q. Why did you not answer the question propounded to you by defendant's counsel from the books alone, unaided by the written statements?

A. Because I didn't hear that request.

Q. Was you requested by any person to answer from the statement and the books?

A. Mr. Holmes in one question asked me to make my deposition from the book, which is the request as stated above that I did not hear and I used my statement merely because it would be easier.

Q. Did you not use said statement in connection with your books in all that part of your cross-examination in which you were detailing items that you stated were contained in the books, and did you not make frequent reference to said written statement?

A. I did; as all my statements are a true copy of the respective entries in my books.

Q. When was said written statement prepared?

A. Last week.

Q. Is it the same one referred to by you in your examination in chief as having been made in your room while one of defendant's counsel was present?

A. It is.

Q. Have you that statement still in your possession?

A. I have.

Q. Have you it present with you now?

A. I have.

Q. Were the books you brought here yesterday morning to enable counsel to examine you on your cross-examination permitted to remain in the custody of the notary so that plaintiff's counsel could examine the same, either at the recess for dinner yesterday, at the adjournment last night or at the recess for dinner to-day?

A. They were not left.

Q. Would you have left them in the custody of the notary at either of those times subject to the inspection and examination of plaintiff's cousel in the presence of the notary if you had been requested so to do?

A. I would with one exception and that is of the second cash-book.

Q. Will you leave the books which you have used on cross-examination with the notary so that I, in his presence, may inspect and examine the same this evening?

A. I will, with the exception of the second cash-book.

Q. Do you not think said second cash-book would be safe if left with the notary and kept by him in his safe?

A. I do.

Q. Then why do you decline to leave it?

A. Because it contains also the business of another firm, but I will allow you examine in my presence all entries made up to January, 1880, the whole month of January, 1880, to page 109.

Q. Have the books you have used been in the hands of any other person than yourself while you have been giving your cross-examination?

A. They have not.

Q. Will you also produce and deliver up to the notary, the ledger, day-book and other books of Schwed & Newhouse so that plaintiff's counsel may in the presence of the notary inspect and examine the same?

A. No, sir.

Q. Why not?

A. Because there is no entry in those books that refers to any transactions we had with H. Heller.

Q. Will you permit the books used in cross-examination to be attached as exhibits and be returned into court with this deposition so that the court which will hear this case may ascertain whether the items which you say are contained therein, are there in point of fact, and so that the court may fully investigate said books so far as the court may deem necessary?

A. I have no objection to giving you all the sheets of any book that contains any transaction that we have had with H. Heller for such purposes.

Q. The question is not whether you will permit me to have the books or leaves detached therefrom, but whether you you will permit the books to be returned into court for such examination thereof as the court, and not yourself, may deem proper. Please answer.

A. When I said in my last answer "for such purposes," I meant I am perfectly willing that all the leaves that contain any of our transactions with H. Heller should be handed to the court for inspection.

Q. Do you decline to permit the books to be attached as exhibits?

A. I do.

Q. In your answer to a question relating to the second cash-book, you say, "it contains also the business of another firm." To what firm do you refer?

A. To Schwed & Newhouse agents for Mrs. E. Schwed.

Q. Then Schwed & Newhouse agents, are the firm, are they?

A. They are not; they are merely agents for Mrs. Schwed.

Q. Is Mrs. Schwed a firm?

A. Mrs. Schwed is owner of the business.

Q. I repeat the question: Is Mrs. Schwed a firm?

A. I don't know in what sense you mean.

Q. I am trying to get what you mean. Is Mrs. Schwed a firm?

A. I don't know.

Q. Did Schwed & Newhouse keep a record of bills payable?

A. They did not.

Q. Was any record made of the notes or any of them made to Mr. Heller referred to in your cross-examination?

A. I usually kept slips of paper indicating all notes payable for each month and whenever a month expired I destroyed them.

Q. I repeat the question; did you keep a record of the notes made to Mr. Heller?

A. Those slips of paper referred to contained also the record of the notes made in favor of H. Heller.

Q. Are those slips of paper in existence, and if not, when were they destroyed?

A. As stated above, they were destroyed at the expiration of each month.

Q. Did you keep a record in any book of any kind of the notes testified to by you to have been made to Mr. Heller?

A. No, sir.

Q. Were said notes recorded or registered or any memorandum of them made either at the time of their execution, payment or renewal in any of the books you have used on cross-examination?

A. No, sir.

Q. You have testified to the making of some notes which are not produced; how can you state that the notes which are not produced were made at all, if no record was made or preserved of the notes you made?

A. Because invariably for all loans or renewals we gave our notes, with the exception of the first amount loaned us by Mr. Heller of 1872 we gave our due bill.

Q. Where does the word loan, or any word of similar import, occur in the items you have given?

A. On several items.

Q. On which ones?

A. I can ascertain by referring to the books.

Q. Please do so?

A. First item marked H. Heller, discount, is entered January thirtieth, 1873, amount $979.34; the second, February fifth, 1873, H. Heller, note discounted, $970; the third, January twenty-seventh, 1874, H. Heller, discount, $1,950; the fourth, May sixteenth, 1874, H. Heller, discount, $1,950; March thirteenth, 1875, balance of notes, $441.40; May twenty-fourth, 1876, H. Heller, discount, $1,454.84; September eleventh, 1877, H. Heller, discount, $1,468.25; April twenty-sixth, 1878, H. Heller, discount, $1,939.17; August tenth, 1878, Herman Heller, loan, $450; February eleventh, H. Heller, loan, $500; February thirteenth, H. Heller, loan, $2,450.43; June twenty-first, 1879, H. Heller, balance of note, $368.43.

Q. Will you please give the items where neither the word discount, loan or other word occurs to indicate the nature of the transactions out of which the cash rose?

A. February thirteenth 1872, H. Heller, $1,000; October eighth, 1872, H. Heller, $2,000; May twelfth, 1873, H. Heller, $1,000; May fourteenth, 1873, H. Heller, $950; July twenty-sixth, 1873, H. Heller, $1,950; September ninth, 1874, H. Heller, $960.67; February twelfth, H. Heller, $1,000; February thirteenth, 1875, H. Heller, $975; March tenth, 1875, H. Heller, $1,500; May seventeenth, 1875, H. Heller, $985, April nineteeth, 1877, H. Heller, $595; March first, 1878, H. Heller, $972.62; May twenty-third, 1879, H. Heller, $2,000; May twenty-ninth, 1879, H. Heller, $1,000; June second, 1879, H. Heller, draft on Rosenthall, $86.37; June seventh, 1879, H. Heller, draft on Mrs. Pillgrim, $80; June ninth, 1879, H. Heller, $1,000.

Q. Will yon now please give us the other entries of cash received from Mr. Heller. I mean any other entries than those heretofore referred to in this deposition where the word discount appears?

A. February twenty-second, 1876, H. Heller, discount trade paper, $1,000; March thirty-first, 1876, H. Heller, balance of discount of February twenty-second, $93; August the sixteenth, 1876, H. Heller, discount $1,236.75; May seventeenth, 1879, H Heller, discount, $600; May nineteenth, 1879, H. Heller, discount, $206.48; July seventeenth, 1879, H. Heller, discount, $1,020.85; November fifteenth, 1879, H. Heller, discount, $1,021.19.

Q. Please turn to the item of date February twenty-second, 1876, and state what portion, if any, of said item is written with ink and what portion is written by lead pencil?

A. "H. Heller, discount, $1,000," is written with ink; words "trade-paper," in pencil.

Q. When were the words trade-paper written there with a lead pencil?

A. When I made out the statement referred to last week.

Q. Do these items appear in your cash-book and are they taken therefrom; I mean the items on this and on the preceding page of your deposition?

A. They do.

Q. Is there any difference between the items where the word discount appears in which you gave, as you claim, notes to Mr. Heller and the last items you gave in which the word discount appears and in which you gave no notes?

A. There is none, at least I made no distinction between the discount of our own paper and the discount of trade papers in entering up the items on our cash-book.

Q. In case of any item in your cross-examination where you claim a note was given which is not produced, where the item has the word discount in it what is there in the item to enable you to say that a note was given and that it was not a discount of trade paper?

A. Because I have all discounts of trade paper in my book which indicate the amounts we received therefrom and are entered in our cash-books; all other items are loans.

Q. Why did you enter in your cash-book the word loan where it appears, and not in other places where it does not appear and where you claim the transaction was a loan?

A I had no particular reason, nor did I put any particular value to those remarks, as I thought there would be no difference in entering the item, so long as it shows from where it came and the amount thereof.

At the hour of adjournment, the plaintiff's counsel asks the witness to leave the books which he now has present with the notary, subject to inspection and examination in the presence of the notary and plaintiff's counsel. Witness refuses to leave second cash-book, but leaves the others.

Not being able to finish the taking of said depositions for the reason that the hour of adjournment, viz. six o'clock has arrived, I adjourn the further taking of the same until to-morrow morning, there to be continued at the place and between the hours mentioned in the annexed notice.

FRANK W. HUGHEY,
Notary Public.

Pursuant to adjournment, on this nnith day of February, A. D.

1881, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of G. W. DeCamp, number 160 Fourth avenue, Pittsburgh, Pennsylvania, I continued the taking of said deposition, as follows:

RE-EXAMINATION OF MR. E. SCHWED, CONTINUED.

Q. What is the amount of the sums for which you say your notes were given, that are not produced here?

A. I will ascertain if you will give me time. The amounts of the notes that are not produced is $9,000.

Q. What is the amount of the notes that are produced that you say were given for loans?

A. $24,595.

Q. Does each item of cash quoted in your cross-examination express the actual amount of cash received in currency, drafts or checks?

A. Yes, sir.

Q. Does the item of May twenty-fourth, 1876, of $1,454.84, express the true amount you received in cash, draft or check from Mr. Heller?

A. It does in this way, that when he notified us that L. L. Ehrmann's note, due May the seventeenth, 1876, and discounted by H. Heller, was protested, we sent him our check for $350 in payment of this note, when he sent us his check for the loan made at that time, he returned with his check our check for $350, these two amounts making the total of $1,454.84 as the actual amount received.

Q. What was the amount of Mr. Heller's check?

A. I couldn't tell at this late hour, not having the checks before me.

Q. Was not his check for the sum of $1,454.84 less $350, the amount of the Ehrmann note?

A. I do not remember at this late hour.

Q. Did his check and the other check for $350, which you say was returned, make the total $1,454.84?

A. As far as I can recollect, it did.

Q. Then the amount of his check was the total amount of cash you received, in point of fact, at that time?

A. It was not; because our check for $350 he did not use but returned to us as a part of his remittance.

Q. Did you receive any cash on your own check for $350?

A. This check was never used, as I tore it up when received back from Mr. Heller.

Q. Does this check of $350 anywhere appear on your cash account?

A. It does not.

Q. Mr. Heller, in his deposition, says that on May twenty-third, 1876, he sent you a check, which he attaches to his deposition, for the sum of $1,104.84. That "Schwed & Newhouse were indebted to me in the sum of $350 for one of their customer's notes which I had previously discounted for them, which had been protested, in return for this check of May twenty-third, 1876, and the $350 I have spoken of, I received the promissory note of Schwed & Newhouse for $1,500." Is that statement true?

A. So far as I can recollect it is.

Q. In your cash-book of date May sixteenth, 1874, give all the en-

tries of that date on both sides of the account in which the name of Mr. Heller appears?

A. Page 182, May sixteenth, 1874, H. Heller, discount, $1,950; page 183, which shows the credits, H. Heller, balance on note, due March thirtieth, $300.

Q. The first item of $1,950, indicates that you received that amount from, and the other item of $300 indicates that you paid that amount to Mr. Heller, do they not?

A. They do.

Q. Explain fully how those payments were made?

A. I cannot recollect at this late date.

Q. Did Mr. Heller in making the remittance to you retain the $300 for the notes which had previously fallen due and send you the notes due March thirtieth, and the balance in cash?

A. I suppose he did.

Q. On page 216 of your cash-book of date March thirteenth, 1875, are there any entries in which the name of H. Heller appears, if so give such entries?

Q. Page 216, March thirteenth, H. Heller, balance of notes, $441.40; page 217, which is the credit side, March thirteenth, 1875, H. Heller, for interest due February thirteenth, $120.

Q, How did you receive the $441.40 from Mr. Heller; what does the expression "balance of notes" mean, and how did you pay the $120 to Mr. Heller?

A. How I received them I cannot recollect at this late date. "Balance of notes" means that this amount formed the balance that was due to us for our notes discounted by H. Heller, and for which we have received as part payment, March tenth, 1875, $1500.

Q. If he owed you $441.40 as a balance on notes discounted, why did you give a note?

A. We did not give him a note for $441.40, but this amount formed the balance due us on notes for $2000, as stated above.

Q. What was the $120 paid to Mr. Heller for?

A. For interest due to him, as the entry indicates.

Q. Was the "February thirteenth" in the item the preceding or suceeding February?

A. Preceding.

Q. If Mr. Heller remitted to you the $441.40, did he retain the $120 for the interest which had previously fallen due?

A. I think he did.

Q. Turn to page 220, of date May seventeenth, 1875, and give the entries of that date in which the name of Mr. Heller appears?

A. Page 220, May seventeenth, 1875, H. Heller, $985.00; page 221, which is the credit side, May seventeenth, 1875, H. Heller, balance of two notes, $700.

Q. Were said two notes due at the time of making said entries?

A. They were.

Q. Did Mr. Heller in making the remittance to you retain the $700 for the notes which had previously fallen due?

A. I think he did.

Q. Up to what time does cash-book number one, contain entries?

A. To June thirtieth, 1876, inclusive

Q. Up to what time does the ledger contain entries?

A. To December 1878, inclusive.

Q. Up to what time does the books of bills receiveable contain entries?

A. To July twelfth, 1878, inclusive.

Q. Up to what time does first memorandum of collection and discount book contain entries?

Q. To January second, 1876, inclusive.

Q. Second memorandum book commences where the other leaves off, does it?

A. It does.

Q. Are those your books you left last night?

A. They are.

Q. Are you willing that book of bills receivable and the memorandum books of collections and discounts shall be attached as exhibits and returned into court with this deposition?

A. I am, if you allow me first to copy a few entries from the second memorandum book.

Said books are here produced to the notary and by him filed herewith as as exhibits, and marked exhibits "fourteen," "fifteen" and "sixteen," respectively.

Q. Will you also attach herewith, as an exhibit, ledger, ending December, 1878, inclusive?

A. I will.

Said ledger is here produced and filed herewith as an exhibit, and marked exhibit "seventeen."

Q. Will you also attach as an exhibit all the other books, including second ledger, second cash-book and day-book?

A. I will only attach all the leaves of the second cash book that contain any entries of our transactions with H. Heller, or I am willing to produce the second cash book in court, at Kansas City, in person whenever the honorable judge who hears this case should request the production of the second cash-book, as it contains also the business of another firm therein. I mean the business of Mrs. Schwed, which I have no authority to to disclose, but will not produce the second ledger and day-book, I am perfectly willing to attach, as an exhibit to this deposition, our first cash-book.

Q. Will you not produce the second ledger and day-book if the court should request?

Objected to by Mr. Cohen, of counsel for defendant, for the reason that it anticipates the action of the court and is apt to place the witness in attitude of contempt to the court when no contempt might exist in the mind of the witness, and it being a question to be answered only when the books are called for by the court.

A. I refuse to answer.

Q. Please state how the interest was paid when renewals were made?

A. The interest was paid on or after the notes fell due.

Q. All these notes except the due-bill run without interest do they not?

A. Except the first, interest on those notes was generally deducted from the amount. I mean to say that the amount of interest is not indicated on the face of the notes, but those interests were paid at the maturity of the notes.

Q. Was the interest on the renewal note paid at the time of giving it or afterwards?

A. As stated before, the interest on all the notes was paid after maturity, except at the time the original notes were discounted, the discount was generally deducted.

Q. Was the judgment note on which the Pittsburgh judgment was confessed, based on the $5,000 note of May second, 1879?

A. It was.

Q. How did it happen that the said note of May twenty-first, 1879, was given for the $2,000, which you say was loaned May twenty-third; the $1,000, loaned May twenty-eighth; the draft on Rosenthall, for $86.37, which was collected June third; the $1,000, loaned June seventh; the draft on Pillgrim of $80,which was collected June ninth; the several interest items of $150, $60 and $53.67,which were credited on June nineteenth; the Castlemyer note of $201.56, and the $368.40 which was loaned June nineteenth, all in 1879, and after the date of said note of May twenty-first, 1879?

A. The date of the note is when I executed it. The dates of the amounts received are when I received those amounts and the date of the other items are when they were entered in the cash-book. The dates above given are not my dates.

Q. Whose dates are they?

A. I can't say.

Q. Did you ever make any account corresponding to the account attached to Mr. Heller's deposition in this case, respecting the items which compose the said $5,000 note?

A. I have in the second memorandum book, the date May twenty-first, 1879, marked exhibit "fifteen." The difference of dates consists that Mr. Heller's dates are his, and the dates in our books are mine. For instance, if he sent me his check dated on the seventh, it would take a day or two to reach me, consequently our dates are different.

Q. At the date of said note of May the twenty-first, 1879, did you owe Mr. Heller anything on account of said notes?

A. We did not.

Q. On what $5,000 and for what period of six months was interest at the rate of six per cent., amounting to $150, computed as expressed in those accounts?.

A. On the amount of $5,000 indicated on note executed May twenty-first, 1879, and the interest computed for the time that note had to run.

Q. On what $1,000 and for what period of time was interest at the rate of six per cent., amounting to $60, computed as expressed in the account?

A. On the amount due February thirteenth, 1879, for one year, as interest on the due-bill executed February thirteenth, 1872; the amount of interest due for one year from February thirteenth, 1878, to February thirteenth, 1879, is what I mean; which due-bill is exhibit "C."

Q. On what $3,000 and for what period of time was interest at the rate of 7 per cent., amounting to $53.67, computed as expressed in the accounts?

A. On the amount of $3,000 for note due may seventh on three months.

Q. Was that the note which represented the items of $500 and $2,450,43 of date February eleventh and thirteenth, 1879?

A. It was.

Q. When were these several computations of interest made and the items entered in your account, in your book as you have stated?

A. I entered them June twenty-first, 1879, but the respective amounts of interest indicates the period which these notes had to run. Mr. Heller made these computations. I don't know when he made them. I received Mr. Heller's account on the twenty-first of June.

Q. For which items do you claim the $9,000 judgment note, on which judgment was confessed at Kansas City, was given; give each item and date?

A. For the amount of $6,000 that was then due to H. Heller, and for the $3,000 which we were to receive from him. The respective items of the $6,000 I cannot state at this late day; but all I know is that this amount of $6,000 was due him.

Q. Were the notes that were given May twenty-second, 1876, for $1,500, for the item of $1.454.84, the notes that were given August twenty-seventh, 1877, for $1,500, for the item $1,468,25; the notes that were given February eighteenth, 1878, for $1,000, for the item of $972.62; and the notes made April twenty-third, 1878, for $2,000, for the item $1,939.17 the notes which with the note February fourth, 1879, for $3,000, formed the basis of the judgment note of $9,000 dated February eight, 1879?

A. I do not remember.

Q. I understood you to say, that at the date of the judgment note of $9,000, $6,000 was due Mr. Heller, and that the said judgment note was given for said $6,000 and an additional $3,000 afterwards received. Is that true?

A. It is.

Q. What were the items that composed said $3,000?

A. The $3,000 for note dated Pittsburgh, February fourth, 1879.

Q. On what dates did you state in your cross-examination, said note of February fourth, 1879, for $3,000, was renewed?

A. May third, 1879, said note was renewed by giving a new one for the same amount, at three months; the second renewal, August fourth, 1879, for three months, we gave a second renewal note; on the fourth of November, 1879, we gave a third renewal note for $3,000, for three months.

Q. If as you stated, said note for $3,000, dated February fourth, 1879, constituted a part of the judgment note of February eighth, 1879, for $9,000, how does it happen that said $3,000 note was renewed May, third, 1879, August fourth, 1879, and November fourth, 1879?

A. Because the judgment note for $9,000, was merely given as security.

Q. Was any of the notes which made up the aggregate of $6,000, that became due prior to said judgment note renewed after the date of said judgment note?

A. I cannot say; suppose some were.

Q. Why was the judgment note of $9,000, given as security?

A. Because Mr. Heller did not want to give us an additional $3,000 to the $6,000 we owed him without some kind of security and this was the condition we could only receive the additional $3,000.

Q. Does the judgment note contain a promise to pay the full amount of all the other notes which form the basis of said judgment note and if so why was it necessary that Mr. Heller should retain said other notes or a portion of them and that said other notes and a portion of them should from time to time be renewed after the giving of said judgment note. Please explain fully?

A. The note was given for the full amount then due him, and the $3,000 additional, and as the note was only held as security, we may have renewed some of the notes that make up that amount.

Q. Did you, while the bills of the plaintiffs in this case were being incurred, expect to pay the same in full?

A. We did.

Q. Had you, prior to January fifteenth, 1880, sustained any losses by fire or otherwise, either in your business here or at Kansas City?

A. I decline to answer, as this question has no connection with the proof of the honesty of the debt to H. Heller.

Q. Was not the sum of $200 which you paid to Wm. Smith & Co., January fifteenth, 1880, paid the same day that you made the paper to enable judgment to be confessed at Kansas City, and was not that the only payment made on their account commencing November, 1878, and ending November, 1879?

A. I decline to answer for the reasons stated above.

Q. What do you mean by the use in your circular to your creditors of the words "Through a series of unexpected business reverses?" And what business reverses had you sustained prior to January fifteenth, 1880?

A. I decline to answer.

Q. What do you mean by the use in said circular of the words "Mr. Heller, who was our largest creditor of that character, who had waited long and patiently for a return of his money?"

Objected to because no such circular or language therein contained has been admitted by the witness to have been issued.

A. I decline to answer.

Q. Why did you not pay Mr. Heller the proceeds of collections made since February fifth, 1880, of accounts and bills receivable, due Schwed & Newhouse, if Mr. Heller, on February fifth, 1880, when you made such circular, had waited long and patiently for a return of his money?

Objected to because the question assumes a fact not proven as regards the circular.

A. I decline to answer.

Q. Has Mr. Heller, since February fifth, 1880, demanded a payment of any portion of the indebtedness which you claim is still due him?

A. I decline to answer.

Q. Is he still patiently waiting for a return of the money which you claim you owe him?

Objected to because it involves the act of another which he can't possibly know.

A. I don't know.

Plaintiffs' counsel here notifies the witness to retain and preserve all books referred to in this deposition not filed herewith as exhibits, so that the same may be produced in obedience to any order that may be made for their production.

To which the witness responds: I will cheerfully do so.

RE-CROSS EXAMINATION BY MR. HOLMES.

Q. Please make the first cash-book to which you have referred in

your testimony a part of your deposition and an exhibit as I understand you to have answered Mr. Botsford that you are willing to do so?

A. I will.

Book produced by witness and marked exhibit "18."

Q. Do the day-book and second ledger, about which Mr. Botsford inquired, contain any entry or entries of any transaction whatever with H. Heller?

A. They do not.

Q. Please refer to the said first ledger, which you have made an exhibit to your deposition, and state on what pages only of said ledger appear any entry or entries referring or pertaining in any way whatever to H. Heller or to any transaction with him?

A. Page 305 only.

Q. Please state what the entries on said page refer to and if any of said entries are in any manner connected with the loans made by H. Heller to Schwed & Newhouse to which you have referred, please state what that connection is?

A. The part of the entries on the debtor side indicate various amounts we paid for Mr. Heller on account of stocks or shares in the Improvement Trust Company, which he owned and on which weekly or monthly judgments were made. Those items are dated February twenty-first, 1872, $12; April fifth, $12; May third, $15; May thirty-first, $12; July ninth, $12; August second, $15; September sixth, $12; September thirtieth, $15; November twelfth, $12; November twenty-ninth, $12; January fourth, 1873, $12; February first, $12; February twenty-eighth, $15; April tenth, $12; May third, $12; May twenty-ninth, $15; July third, $12; July twenty-ninth, $15; September third, $12; October third, $12; November third, $15; December sixth, $12; January second, 1874, $15; January thirtieth, $12; February twenty-eighth, $12.

Q. Please state to what other transactions the remaining items on the debit side of said account refer?

A. To payments made to H. Heller, viz.: March fourteenth, 1874, $688.23; May sixteenth, 1874, $299.77.

Q. Please state to what the items on the credit side of said account refer?

A. First item to interest; the second item to interest; the third item to cash; fourth item to a note.

Q. Please refer to the debit item dated May sixteenth, 1874, for $299.77, and also to the item on page 183 of your first cash book, dated May sixteenth, 1874, for $300 and state what connection, if any, exists between said items?

A. The amount of $300 entered May sixteenth in said cash book H. Heller actually received, but in order to balance H. Heller's account on ledger, page 305, I only entered on that date $299.77, this making a difference between the two entries of 23 cents.

Q. Are the items on page 183 of your first cash-book of $300 and on page 17 of said cash-book of $120, and on page 221 of said cash-book of 700 included in the gross amount of payments which you stated in your examination in chief had been paid to Mr. Heller?

A. The $700 are included in the gross amount stated but the other items are not.

Q. On what account was the items on the debit side of said first ledger paid?

A. In full payment of the shares stated above.

Q. In what manner did Schwed & Newhouse get credit with Mr. Heller for the items on the debit side of said ledger expended for him or paid to him as you have stated?

A. February eleventh, 1873, by interest, $120; February eleventh, 1874, by interest, $120; February twentieth, 1874, by cash, $72; March thirtieth, 1874, by note, $1,000.

Q. Is said item on the debit side of said account dated March fourteenth, 1874, for $688.23 also entered in your cash-book attached to your deposition with the corresponding date?

A. It is.

Q. When giving answers respecting entries pertaining to your dealings with Heller you say in your re-examination that you then used a statement in connection with your books; were not all your answers based upon the entries actually made in your books and which you knew to exist in your books at the time you answered each question?

A. They were.

Q. Were you ever asked to leave the books filed with your depositions as exhibits with the notary for examination of plaintiffs' counsel prior to the adjournment last night and did you not consent to so leave said books immediately upon being requested to do so?

A. I was never asked prior to last night to leave those books, but when I was asked last night I left them willingly with the notary.

Q. Has said second cash-book been here during the whole of this week while you have been giving your testimony and have counsel for plaintiffs been at liberty during all of said time to inspect and examine that part of said second cash book which contains a record of the business of Schwed & Newhouse, and have not plaintiffs counsel frequently looked at said book while you were answering questions from it?

A. Yes, sir.

Q. Are you sufficiently familiar with the business of Schwed & Newhouse and their transactions with H. Heller as to be able to state wherever an entry appears on your book of cash received from Mr. Heller whether or not said cash was received as a loan or as proceeds of a discount of your customers' paper?

A. Yes, sir.

EDWARD SCHWED.

Sworn to and subscribed before me on the day, at the place and between the hours aforesaid.

FRANK W. HUGHEY,
Notary Public.

[SEAL.]

EXHIBIT "A 1."

In the United States Circuit Court for the Western Division of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
against
EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY,
Defendants.

To the above named defendants, or to Bryant & Holmes and Tichenor & Warner, their attorneys of record, you are hereby notified that the

depositions of the above named Edward Schwed, Simon H. Newhouse and Herman Heller, and also of Mrs. Edward Schwed, Samuel Gallagher, Samuel Frank, ——— Oppenheim, Vincent Stephens, Samuel Parker and Josiah Cohen, will be taken *de bene esse*, to be read on the final hearing of said cause or on the hearing of any motion or application therein at the law office of George W. DeCamp, Esq., No. 160 Fourth Avenue, Pittsburgh, Allegheny county, Pennsylvania, on the second day of February, A. D. 1881, between the hours of eight o'clock a. m., and six o'clock p. m. thereof, and that the taking of said depositions if not completed on that day will be continued from day to day at the same place and between the same hours until finished. The reason for taking said depositions is that the above-named persons live more than one hundred miles from Kansas City, Missouri, the place of the hearing of said cause and that said cause is a suit in equity.

BOTSFORD & WILLIAMS, and
SCARRITT & RIGGINS,
Attorneys for Plaintiffs.

We acknowledged service of the above notice, this twenty-fourth day of January, A. D. 1881.

BRYANT & HOLMES.
Attorneys for Defendants.

(Endorsed) Exhibit "A 1."
FRANK W. HUGHEY,
Notary Public.

EXHIBIT "A."

Schwed & Newhouse.

February third, 1880.

282 Silver rings, per half dozen,		Frempton.	.50	$23 50
3½ dozen pins, " "		"	.50	1 50
" lot		P.		50
" "		P.		90
" "		"		80
" "		"		90
" "		"		2 25
" "	Odd Fellos'	"		1 75
" "		"		1 20
Hook and swivels,		Gallingers,		4 00
Pins, lot,		P.		1 50
" "		"		1 00
" "		"		2 00
Gold wire, hook and plate,		"		1 00
Ear rings, lot,		"		4 50
" "		Cash,		1 50
" "		P.		1 15
" "		"		2 50
" "		"		2 50
" "		"		2 75
" "		"		3 00
" "		"		2 25
" "		"		6 00
4 sets jewelry,		"		2 50
35 sets jewelry, per set,		"	.45	15 75

Collar buttons, lot,	P.		$ 70
" "	"		90
Shirt " "	"		1 10
" " "	"		7 50
1 set shirt studs,	Burns,		35
61 watch charms,	P.	35	21 35
80 " "	P.	15	12 00
37 lockets,	P.	60	22 20
4 sets jewelry, per set,	P.	2 50	10 00
38 sets jewelry, "	P.	1 50	57 00
80 sets jewelry, "	Gallingers,	1 10	88 00
51 neck chains,	"	1 10	56 10
2 one office clock,	Myers		3 00
One office clock,	P.		3 10
2 one office clock,	Cash.		1 60
Bracelets,	Gallinger,		30
"	P.		10
"	Koener,		3 15
"	Hulmes,		1 00
Sundries,	P.		10
Blk watch guards, lot, "	P.		50
" " "	"		5 50
" " "	"		5 00
" " "	"		2 25
2 neck chains, "	Gallingers.	1 00	2 00
Watch chain,	Carlo,		5 50
149 watch chains, each,	Pd.	20	29 80
6 neck chains, "	P.	1 60	9 60
4 neck chains, "	"	2 25	9 00
4 " " "	"	3 56	14 00
Chains, lot,	"		60
108 crosses charms, each,	"	55	59 40
Swivels,	"		1 00
"	"		3 50
Watch hook,	"		50
Watch hook, lot,	"		3 00
Collar buttons, etc.	"		2 75
Shirt studs, lot,	"		3 25
71 Sleeve Buttons, each,	"	35	24 85
70 " " "	"	10	7 00
215 " " "	"	20	43 00
Ear rings, lot,	"		1 60
5 neck chains,	"	1 10	5 50
1 scarf ring and pin, each,	Cash	1 00	2 00
25 " " " "	P.	25	6 25
2½ doz. rings, per ½ doz.	"	1 00	2 00
½ " "	"		75
9 "	"		75
7 "	Kline		1 05
5 "	Gallingers,		85
14 "	P.		1 90
13 "	"		1 50
12 "	"		2 00
12 "	"		1 25
12 "	"		1 25

8	"	"		1 10
13	"	Gallingers.		1 00
Rings, lot.		P.		2 75
"	"	"		1 00
"	"	Hulmes.		1 00
"	"	P.		6 50
"	"	P		32 00
"	"	Cash.		8 00
48 pins, each,		P.	35	16 80
Ear rings, lot,		P.		3 25
160 Pins, each,		P.	30	48 00
One pin,		"		55
120 ear rings, each,		"	30	36 00
Clock, Cohen				2 05
Clock alarms,		Cash,		3 00
5 watch cases,		P.	2 80	14 00
1 watch case,		Bruno,		1 00
2 clocks,		Gallingers	2 50	5 00
2 one clock,		Cash,		2 25
One c ock,		P.		2 35
One clock,		Cash,		1 30
Clock,		P.		1 00
35 pr bracelets,		Gallingers,	75	26 25
One clock,		Cash,		1 15
One clock,		P.		1 00
One clock,		"		2 10
One clock,		Cash,		2 10
2 clocks on shelf,		P.	1 50	3 00
16 clocks,		"	1 40	22 40
Regulator,		Cohen,		8 00
4 watch alarm clocks,		P.	1 25	5 00
One clock,		"		1 75
One clock,		"		1 00
One clock,		"		1 00
One clock,		Gailinger,		1 00
One clock,		P.		1 15
One clock,		Gallinger,		1 00
One clock,		Gallinger,		1 15
One clock,		P.		1 00
2 clocks, each,		P.	60	1 20
One clock,		P.		1 15
3 clocks,		P.	1 25	3 75
One clock,		Cash,		65
Five clocks,		P.	60	3 00
One clock,		"		80
One,		Kline,		60
21 neck chains, each,		P.	1 40	29 40
17 neck chains, each,		P.	2 80	47 60
70 watch chains, each,		P.	80	56 00
25 necklace, each,		P.	1 55	38 75
43 watch chains, each,		P.	2 50	107 50
15 necklaces, each,		P.	2 55	38 25
5 clocks,		P.	1 05	5 25
8 clocks,		Gallinger,	1 25	10 00
12 clocks,		P.	1 00	12 00

6 clocks.	P.	1 50	$9 00
2 clocks.	P.	2 65	5 30
4 clocks.	P.	1 40	5 60
6 clocks.	P.	2 15	12 90
3 clocks.	P.	3 25	9 75
6 clocks.	P.	3 36	19 80
1 clock.	Davis.		3 10
4 clocks.	P.	1 15	4 60
7 clocks.	P.	30	2 10
11 clocks.	P.	40	4 40
16 clocks, lots lot.	Gallinger.		55
4 clocks.	P.	3 00	12 00
6 one clock.	P.	50	3 00
24 necklaces.	P.	60	14 40
30 watch chains, silver.	P.	80	24 00
4 watch chains, silver.	P.	2 25	9 00
71 watch chains.	P.	1 25	88 75
36 watch chains.	P.	1 55	55 80
120 watch chains.	P.	70	84 00
50 watch chains, nickel.	P.	60	30 00
5 watch chains.	P.	75	3 75
50 watch chains.	P.	55	27 50
75 watch chains.	P.	1 00	78 85
47 watch chains.	P.	50	23 50
One crystals box.	P.		25
Four "	P.	25	1 00
Fifteen "	P.	20	3 00
Lot	P.		30
One clock.	P.		50
One "	Cash.		2 00
Two "	P.	1 10	2 20
Two office clocks.	Gallinger.	2 50	5 00
One " "	Gallinger.		2 00
15 spectacles per doz. pair.	Gallinger.		15 00
2 clocks.	Gallinger.	1 50	3 00
Scales and weights.	P.		1 05
One clock.	Gallinger.		2 00
One "	Gallinger.		3 00
One "	Gallinger.		1 00
One "	Gallinger.		2 00
42 rings.	P.	2 00	84 00
One pair bracelets.	Cash.		2 80
12 " "	P.	1 00	12 00
52 pairs ear rings.	P.	10	5 20
12 sets " "	P.	2 00	24 00
66 " " "	P.	30	19 80
One pair ear rings.	Gallinger.		2 00
One " "	Gallinger.		2 00
Fourteen pair ear rings.	P.	1 10	15 40
37 " " "	P.	2 00	74 00
One shirt stud.	Cash.		1 25
22 " "	P.	30	6 60
2 watch chains.	Gallinger.	75	1 50
39 watch chains.	Kline.	25	9 75
24, one ear ring.	Cash.		1 20

23 ear rings		
1 stud,		
10 sets		
58 breast pins,		
61 crosses,		
3 neck chains,		
3 neck chains,		
40 crosses,		
28 breast pins,		
51 crosses,		
28 crosses,		
22 pins,		
39 pair ear rings,		
Breast pin,		
38 pair ear rings,		
40 pair ear rings,		
1 set,		
12 set,		
57 pair cuff buttons,		
59 pair cuff buttons,		
58 pair cuff buttons,		
60 pair cuff buttons,		
Collar button,		
18 Cuff buttons,		
Collar button,		
40 charms,		
50 charms,		
69 one charm,		
68 charms,		
13 set		
12 "		
15 "		
12 set,		
5 "		
41 breast pins,		
1 bunch of rings,		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
1 " "		
19 breast pins,		
13 sets,		
1 "		
11 "		
12 "		
Cash,		$ 1 20
Maloney,		10
P.	1 15	11 50
Gallinger,	40	23 20
P.	25	15 25
cash, Myers,	3 25	9 75
P.	1 10	3 30
P.	25	10 00
P.	15	4 20
P.	60	30 60
P.	48	12 60
P.	40	8 80
P.	70	27 30
P.		3 00
P.	25	9 50
P.	55	22 00
		1 00
Cass,		
P.	40	4 80
P.	20	11 40
P.	20	11 80
P.	40	23 20
P.	15	9 00
P.		2 00
P.	1 50	27 00
P.		2 25
P.	1 20	48 00
P.	1 55	77 50
		85
Cash,		
P.	40	27 20
P.	1 30	16 90
P.	30	3 60
P.	1 00	15 00
P.	25	3 00
P.	1 50	7 50
P.	35	14 35
P.		1 25
P.		1 40
P.		1 00
P.		2 00
P.		1 50
P.		2 25
P.		3 00
P.		2 00
P.		4 00
P.		3 00
"		5 00
"		5 00
"		4 00
"		10 00
"		15 50
"	50	9 50
"	2 15	27 95
Cash,		1 50
Frempton,	50	5 50
P.	2 50	30 00

1 bunch rings, silver,	P.		$1 25
" " "	"		2 00
" " "	"		1 00
" " "	"		2 00
" " "	"		3 50
1 ring,	Gallinger,		50
" lot,	P.		2 00
" "	P.		2 00
" "	P.		2 00
Ring lot,	P.		4 00
2 ring, each,	P.	1 35	2 70
184 rings,	Frempton,	1 00	184 00
54 sets ear rings,	Gallinger,	50	27 00
53 scarf pins,	Kline,	25	13 25
48 cuff button,	P.	45	21 60
8 watch hooks, per 1-2 doz.,	P.	55	4 40
4 " swivels, per 1-2 doz.,	P.	50	2 00
4 cards of bars,	P.	50	2 00
Lot,	P.		2 00
15 cards shirt buttons,	P.	25	3 75
36 ear rings,	P.	10	3 60
Sundries,	P.		1 00
54 rings,	Gallingers,	2 55	137 70
15 set,	P.	60	9 00
14 "	P.	1 05	14 70
34 1 locket,	Gallingers,		3 00
33 "	P.	1 25	41 25
14 sets,	P.	55	7 70
30 1-2 doz. shirt buttons per 1-2 doz.,	Frempton,	50	15 00
60 pins,	P.	35	21 00
27 1-2 doz. shirt studs per 1-2 doz.,	P.	40	10 80
73 pr. cuff buttons,	P.	30	21 90
48 breast pins,	P.	12	5 76
22 scarf pins,	P.	65	14 30
12 one charm,	Cash,		45
11 "	Frempton,	25	2 75
7 charm cards,	P.	25	1 75
Sundries,	P.		3 00
53 thimbles,	P.	15	7 85
Hooks and swivels, lot,	P.		2 00
1 ear hook bx.,	Frempton,		50
5 ear hook, bx.,	P.	50	2 50
72 ear rings,	P.	15	10 80
50 cards collar buttons,	P.	35	17 50
Small safe,	P.		65 00
Large safe,	P.		100 00
3 dozen spectacles,	P.	50	1 50
Pouches, watch,	P.		50
Sundries, handles,	Frempton,		25
10 bx. pins, for B. pins,	P.	25	2 50
Crystals, lot,	P.		1 00
4 plyers, "	P.		50
Rings for keys,	P.		10
Clock hands,	P.		50
Plyers,	P.		50

Plyers,	P		$	75
Files,	"			60
Watch hands,	"		2	00
Watch springs,	"		10	00
Watch springs,	Frempton,			50
Keys,	P.			50
Springs,	P.			50
Pin fasteners,	P.			25
Keys,	P.			25
Sundries,	P.			25
Rings for keys,	P.			25
2 eye glasses,	P.		1	00
Keys,	P.			25
Springs,	P.			25
Crystals,	P.		1	25
Rings,	P.			25
Pin fasteners,	P.		1	00
Sundries,	P.			50
Sundries	P.		1	00
Sundries,	P.		1	00
Keys,	P.			50
Sundries,	P.			25
18 bx. crystals,	P.	60	1	80
Lot,	P.			25
Lot,	P.			25
Lot,	P.		2	50
Lot,	P.			25
Guards,	P.			25
Brushes,	P.			25
Guards,	P.			25
Empty boxes,	P.			25
Spect. cases,	P.			50
Tabs,	P.			25
250 steel chains,	P.	1(a)	2	50
4 box clock oil,	P.	25	1	00
Pith,	P.			25
Empty box,	P.		1	00
Cards,	P.		1	00
12 goggles,	P.	6		72
Box shirt studs,	P.		2	00
6 Chamois skins,	P.	25	1	50
1 paper watch keys,	Cash,			25
6 paper watch keys,	P.	25	1	50
Springs,	P.		1	00
Vise,	Cohen,		1	05
Office chair,	P.			50
Trunk,	Frempton,		5	00
2 stools and chair,	P.	25		75
3 tables, long,	P.	5 00	15	00
Desk,			3	00
Stove and pipe,	P.		3	50
Small table,	P.			50
Cupboard and shelving,	P.		6	00
Empty trays,	"			50
Sundries,	"			50

Envelopes,	P.	$ 25
Empty boxes, etc.,	"	50
2 Clocks,	Shannon,	2 30

EXHIBIT "B."

NEW YORK, June 18, 1879.

Messrs. Schwed & Newhouse, Pittsburgh:

Dear Sirs:—Yours of the 16th inst. at hand. Our knowledge of Mr. Mitchell's business in Kansas City is based upon the purchases he made of us, and they were quite extensive, from July, 1877, until Fall, 1878. Mr. M. moreover always told us that he is doing well there and that the prospects for establishing a good trade there are very encouraging, and we have no reason to disbelieve him.

The cause of his desire to sell out are simply his mistrust in the men who are in his employ. Whether he is correct in this or not we cannot tell, but he has made up his mind not to be engaged in any business unless he can give it his personal attention, and this he says is his only reason for trying to sell out. Our advice to you is to get all the information you can about Kansas City (we do not know enough about it); perhaps it may be well for one of you to go there and look at the place, and at Mitchell's business. He says that his stock amounts to only about $5,000, which consists principally of jewelry; he kept no watches.

If you have an idea of buying the business you had better come here and have a talk with Mr. N. Should you not come to an understanding with him you have only lost the traveling expenses. Yours truly,

SUSSFELD, LORSCH & CO.

On the back of which is the following endorsement: "Exhibit 'A.' Frank W. Hughey, Notary Public. N. Y., June 18, '79. Sussfeld, Lorsch & Co. R. 19."

EXHIBIT "C."

$1000. PITTSBURGH, Feb'y 13, 1872.

Due to H. Heller one thousand dollars, with interest to be paid annually. SCHWED & NEWHOUSE.

Endorsed on the back of the above is "Exhibit 'C.' Frank W. Hughey, Notary Public."

EXHIBIT "D."

$1000. PITTSBURGH, January 27, 1873.

Three months after date we promise to pay to the order of H. Heller one thousand dollars, at 235 Market street, Philadelphia, without defalcation. Value received. SCHWED & NEWHOUSE.

Due Apl. 27–30.

Signature of Schwed & Newhouse to above exhibit erased by lines drawn through the same.

The above is endorsed on the back as follows: "Exhibit 'D.' Frank W. Hughey, Notary Public. H. Heller."

Signature of H. Heller erased by lines drawn through the same.

EXHIBIT "E."

$1000. PITTSBURGH, May 9, 1873.

Sixty days after date we promise to pay to the order of H. Heller one thousand dollars, at 235 Market street, Philadelphia, without defalcation, Value received. SCH—(balance of signature torn off).

Due July 8–11.

Endorsed on the back is as follows: "Schwed & Newhouse, 1000. July 8–11. Exhibit 'E.' Frank W. Hughey, Notary Public. H. Heller."

EXHIBIT "F."

$1000. PITTSBURGH, May 9, 1873.

Ninety days after date we promise to pay to the order of H. Heller one thousand dollars, at 235 Market street, Philadelphia, without defalcation. Value received. SCH—(balance of signature torn off).

Due Aug. 7–10.

Across the face of said note is the word "paid."

On the back of which is endorsed as follows: "Schwed & Newhouse, 1000. Aug. 7–10. Exhibit 'F.' Frank W. Hughey, Notary Public. H. Heller."

EXHIBIT "G."

$1000. PITTSBURGH, July 22, 1873.

Two months after date we promise to pay to the order of H. Heller one thousand dollars, at 819 Market street, Philadelphia, without defalcation. Value received. SCHWED & NEWHOUSE.

Due Sept. 22–25.

Across the face of said note is the word "paid."

On the back of which is endorsed "Schwed & Newhouse, 1000. Sept. 22–25. Exhibit 'G.' Frank W. Hughey, Notary Public. H. Heller. Money is very tight. I have about 100 dollars in Union B'k'g Co."

EXHIBIT "H."

$1000. PITTSBURGH, July 22, 1873.

Three months after date we promise to pay to the order of H. Heller one thousand dollars, at 819 Market street, Philadelphia, without defalcation. Value received. SCHWED & NEWHOUSE.

Due Oct. 22–25.

Signature of Schwed & Newhouse to above note is erased by lines. drawn through same.

Across the face of said note is written "paid Oct. 25, 1873."

On the back of which is endorsed the following: "Schwed & Newhouse, 1000. Oct. 22–25. Exhibit 'H.' Frank W. Hughey, Notary Public H. Heller."

EXHIBIT "K."

$1000. PITTSBURGH, January 26, 1874.

Ninety days after date we promise to pay to the order of H. Heller one thousand dollars, at 821 Market street, Philadelphia, without defalcation. Value received. SCHWED & NEWHOUSE.

Due April 26–29.

Across the face of said note is the word "paid."

On the back of which is endorsed the following: "Exhibit 'K.' Frank W. Hughey, Notary Public. H. Heller."

EXHIBIT "L."

$1000. PITTSBURGH, January 26, 1874.

Sixty days after date we promise to pay to the order of H. Heller, one thousand dollars, at 821 Market street, Philadelphia, without defalcation. Value received. SCHWED & NEWHOUSE.

Due March 27–30.

Across the face of said note is the word "paid."

On the back of which is endorsed the following: "Exhibit 'L.' Frank W. Hughey, Notary Public. H. Heller. Cash pr. Improvement Co."

EXHIBIT "M."

$1000. PITTSBURGH, May 16, 1874.

Two months after date we promise to pay to the order of H. Heller one thousand dollars, at 821 Market street, without defalcation, for value received. SCHW—(balance of signature torn off).

Due July 16–19.

Across the face of said note is the word "paid."

Upon the back of which is endorsed as follows: "Schwed & Newhouse. 1000. July 16–19. Exhibit 'M.' Frank W. Hughey, notary public. H. Heller."

The signature of H. Heller on back of said note is erased by lines drawn through the same.

EXHIBIT "N."

$1,000.00. PITTSBURGH, February 12th, 1875.

Four months after date we promise to pay to the order of H. Heller, one thousand dollars, at 819 and 821 Market street, Philadelphia, without defalcation, for value received.

Due June 12–15. SCHWED & NEWHOUSE.

Across the face of said note is the word "paid."

On the back of which is endorsed the following: "3769, Schwed & Newhouse. 1000. June 12–15. Exhibit 'N.' Frank W. Hughey, notary public. H. Heller."

EXHIBIT "O."

$500.00. PITTSBURGH, May 22d, 1876.

Two months after date we promise to pay to the order of H. Heller, five hundred dollars, at 821 Market street, Philadelphia, without defalcation, value received.

Due July 22–25. (Signature torn off.)

Endorsed on the back as follows: "Exhibit 'O.' Frank W. Hughey, notary public."

EXHIBIT "P."

$500.00. PITTSBURGH, May 22d, 1876.

Three months after date we promise to pay to the order of H. Heller, five hundred at 821 Market street, Philadelphia, without defalcation, value received.

Due July 22–25.

"Send the wrong one." SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Endorsed on the back as follows: "Exhibit 'P.' Frank W. Hughey, notary public."

EXHIBIT "Q."

$500.00. PITTSBURGH, May 22d, 1876.

Four months after date we promise to pay to the order of H. Heller, five hundred dollars, at 821 Market street, Philadelphia, without defalcation, value received.

Due Sept. 22–25. (Signature torn off.)

On the back is the endorsement, as follows: "Exhibit 'Q.' Frank W. Hughey, notary public."

EXHIBIT "R."

$595.00. PITTSBURGH, April 18th, 1874.

Four months after date we promise to pay to the order of H. Heller, five hundred ninety-five dollars, at 821 Market street, Philadelphia, without defalcation, value received.

Due Aug. 18–21. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

On the back of which is endorsed the following: "Exhibit 'R.' Frank W. Hughey, notary public."

EXHIBIT "S."

$500 00. PHILADELPHIA, August 27th, 1873.

Four months after date we promise to pay to the order of H. Heller, five hundred dollars, without defalcation or discount, value received.

Due 27–30. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

On the back of which is the following endorsement: "H. Heller. M. M. Newman & Co. Exhibit 'S.' Frank W. Hughey, notary public."

EXHIBIT "T."

$500.00. PHILADELPHIA, Aug. 27, 1877.

Three months after date we promise to pay to the order of H. Heller, five hundred dollars, at 821 Main street, H. Heller's office, without defalcation or discount; value received.

150
Nov. 30.

Due Nov. 27–30.

SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

Upon the back of said note is the endorsement as follows: "H. Heller. M. M. Newman & Co. Exhibit 'T.' Frank W. Hughey, notary public."

EXHIBIT "U."

$500.00. PHILADELPHIA, Aug. 27th, 1881.

Two months after date we promise to pay to the order of H. Heller, five hundred dollars, at 821 Market street, H. Heller's office.

150
Oct. 30.

(Signature cut off.)

Due Oct. 27–30.

Upon the back of said note is the endorsement as follows: "H. Heller. M. M. Newman & Co. Frank W. Hughey, notary public."

EXHIBIT "V."

$500.00. PITTSBURGH, Feby. 18th, 1878.

Four months after date we promise to pay to the order of H. Heller, five hundred dollars at 314 Market street, Philadelphia, Pa., without defalcation, value received.

SCHWED & NEWHOUSE.

Due June 18–21.

Upon the back of said note are the following endorsements: "Exhibit 'V.' Frank W. Hughey. H. Heller. (In pencil—For collection, M. M. Newman.)"

EXHIBIT "W."

$500.00. PITTSBURGH, February 18th, 1878.

Three months after date we promise to pay to the order of H. Heller five hundred dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due May 18–21. SCHWED & NEWHOUSE.

Upon the back of said note are the following endorsement: "H. Heller, Exhibit 'W.' Frank W. Hughey, notary public. (In pencil.—For collection, M. M. Newman.")

EXHIBIT "X."

314

$1.000.00. PHILADELPHIA, April 23d, 1878.

Four months after date we promise to pay to the order of H. Heller, one thousand dollars, 314 Market street, without defalcation, value received.

Aug. 23–26. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note are the following endorsements: "Schwed & N. 1000. Aug. 23–26. Exhibit 'X.' Frank W. Hughey, notary public. H. Heller."

The signature of H. Heller, on back of said note is erased by lines drawn through the same.

EXHIBIT "Y."

$1,000 00. PHILADELPHIA, April 23, 1878.

Three months after date we promise to pay to the order of H. Heller, one thousand dollars, at 314 Market street, without defalcation, value received.

Due July 23–26. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

Across the face of said note is the word "paid."

Upon the back of said note are the following endorsements: "Schwed & N. 1,000, July 23–26. Exhibit 'Y.' Frank W. Hughey, notary public. H. Heller."

The signature of H. Heller upon the back of said note is erased by lines drawn through the same.

EXHIBIT "Z."

$3,000.00. PITTSBURGH, Feby. 4th, 1879.

Three months after date we promise to pay to the order of H. Heller, three thousand dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

SCHWED & NEWHOUSE.

Due May 4–7.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

Upon the back of said note are the following endorsements: "Exhibit 'Z.' Frank W. Hughey, notary public. H. Heller. (In pencil—Schwed & N. $3,000. May 4–7)"

The signature of H. Heller upon the back of said note is erased by lines drawn through the same.

EXHIBIT "No. 1."

$5,000.00. PHILADELPHIA, May 21st, 1879.

Six months after date we promise to pay to the order of H. Heller five thousand dollars, at 314 Market street,, without defalcation, value received.

113

Nov. 24.

Nov. 21–24. SCHWED & NEWHOUSE.

Upon the back of said note are the following endorsements: "Exhibit 'No. 1.' Frank W. Hughey, notary public. H. Heller. Simon Muhr.

2403"

EXHIBIT "No. 2."

$500.00. PITTSBURGH, May 18th, 1878.

Three months after date we promise to pay to the order of H. Heller, five hundred dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Aug. 18–21. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

On the back of said note is the following endorsement: "Exhibit 'No. 2.' Frank W. Hughey, notary public."

EXHIBIT "No. 3."

$500.00. PITTSBURGH, Aug. 19th, 1878.

Three months after date we promise to the order of H. Heller, five hundred dollars, at 314 Market street, Philadelphia, without defalcation, value received.

Due Nov. 19–22. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note is the following endorsement: "Exhibit 'No.3.' Frank W. Hughey, notary public."

EHXIBIT "No. 4"

$500.00. PITTSBURGH, Nov. 19th, 1878.

Three months after date we promise to pay to the order of H. Heller, five hundred dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Feb'y 19–22. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

"Exhibit 'No. 4.' Frank W. Hughey, notary public;" is endorsed on the back of said note.

EXHIBIT "No. 5."

$500.00. PITTSBURGH, June 18th, 1878.

Three months after date we promise to pay to the order of H. Heller, five hundred dollars, at 314 Market street, Philadelphia, without defalcation, value received.

Due Sept. 18–21. (Signature torn off.)

Upon the back of said note is endorsed the following: "Exhibit 'No. 5.' Frank W. Hughey, notary public. H. Heller."

EXHIBIT "No. 6."

$500.00. PITTSBURGH, Sept. 18th, 1878.

Three months after date we promise to pay to the order of H. Heller, five hundred dollars, at 314 Market street, Philadelphia, Pa., without defalcation, for value received.

SCHWED & NEWHOUSE.

Due Dec. 18–21.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note is this endorsement, viz: "Exhibit 'No. 6.' Frank W. Hughey, notary public."

EXHIBIT "No. 7."

$500.00. PITTSBURGH, December 18th, 1878.

Three months after date we promise to pay to the order of H. Heller, five hundred dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due March 18–21. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note is this endorsement, viz: "Exhibt 'No. 7.' Frank W. Hughey, notary public."

EXHIBIT "No. 8."

$1,000.00. PITTSBURGH, July 23d, 1878.

Three months after date we promise to pay to the order of H. Heller, one thousand dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Oct. 23–26. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note are the following endorsements, viz: "Schwed & N. 1000. Oct. 23–26. Exhibit 'No. 8.' Frank W. Hughey, notary public. H. Heller."

EXHIBIT "No. 9."

$1,000 00. PITTSBURGH, October 23d, 1878.

Three months after date we promise to pay to the order of H. Heller, one thousand dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Jan'y 23–26. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to said note is erased by lines drawn through the same.

Upon the back of said note are the following endorsements, viz: "Exhibit 'No. 9.' Frank W. Hughey, notary public."

EXHIBIT "No. 10."

$1,000.00. PITTSBURGH, Aug. 23d, 1878.

Three months after date we promise to pay to the order of H. Heller, one thousand dollars at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Nov. 23–26. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note is the following endorsement, viz: "Exhibit 'No. 10.' Frank W. Hughey, notary public."

EXHIBIT "No. 11."

$1,000.00. PITTSBURGH, Nov. 23d, 1878.

Three months after date we promise to pay to the order of H. Heller, one thousand dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Feb'y 23–26. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to the above note is erased by lines drawn through the same.

Upon the back of said note are the following endorsements, viz: "Schwed & Newhouse, 1000 Feb'y 23–26. Exhibit 'No. 11.' Frank W. Hughey, notary public. H. Heller."

The signature of H. Heller on the back of said note is erased by lines drawn through the same.

EXHIBIT "No. 12."

$3,000.00. PITTSBURGH, May 3d, 1879.

Three months after date we promise to pay to the order of H. Heller, three thousand dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Aug. 3–6. SCHWED & NEWHOUSE.

Upon the back of said note are the following endorsements, viz: "Schwed & Newhouse. 3000. Aug. 3–6, Exhibit 'No. 12.' Frank W. Hughey, notary public. Interest $55.42. 7 per cent. H. Heller."

EXHIBIT "No. 13."

$3,000.00. PITTSBURGH, Aug. 4th, 1879.

Three months after date we promise to pay to the order of H. Heller, three thousand dollars, at 314 Market street, Philadelphia, Pa., without defalcation, value received.

Due Nov. 4–7. SCHWED & NEWHOUSE.

The signature of Schwed & Newhouse to above note is erased by lines drawn through the same.

Upon the back of said note are the following endorsements, viz: "Schwed & Newhouse. $3,000. Nov. 4–7. Exhibit 'No. 13.' Frank W. Hughey, notary public. H. Heller."

And the said Josiah Cohen, of lawful age, being by me cautioned and affirmed to testify the whole truth and carefully examined, deposeth and saith:

Q. What is your name, place of business and residence?

A. Josiah Cohen; 144 Fifth avenue. I live in Allegheny City in the State of Pennsylvania.

Q. What is your vocation?

A. I am an attorney at law.

Q. Are you the J. Cohen whose name appears in the court proceedings in the case of H. Heller against Schwed & Newhouse, in which judgment was confessed January twenty-sixth, 1880, in the common pleas court in this city?

A. I did confess such a judgment; I do not know its date.

Q. Did you attend the execution sale had under said judgment February third, 1880?

A. I did attend a sale on an execution issued by said plaintiff. I do not know the date.

Q. Did you buy any property at said sale?

A. I neither bid nor bought that I have any present knowledge of.

Q. In exhibit "A," filed with the deposition of witness Parker, as a copy of the sales book which he kept of said sale as a clerk for the sheriff, your name appears as having bought a clock for $2.05, a regulator for $8 and a vise for $1.05; how could said item have appeared in said sale book, unless you had bought said articles, and are you not mistaken in the answer you make to the last question?

A. I was not mistaken in the answer I then made. I stated to my present knowledge; since answering that question, you have shown me exhibit "A," on examination of which I now say I may possibly have made a bid on the three insignificant items you refer to in the absence from the salesroom of the plaintiff and in his behalf.

Q. If you bought or bid for said articles, were they taken away from the store-room?

A. Some of the three articles were, I believe, removed from the store-room.

Q. To what place were they removed and what finally became of them?

A. To my office; I believe the clock now in my bed-room is the one referred to.

Q. What became of the regulator and vise?

A. To the best of my recollection I cannot say.

Q. Did you take them away from the store-room?

A. I fail to remember.
Q. What is your best recollection on the subject?
A. I have no present recollection on the subject.
Q. Have you had the regulator or the vise since the sale?
A. I have no recollection.
Q. Have you them now?
A. No, sir.

Q. Mr. Parker, who clerked at the sale has testified that "after the sale was over, Gallinger, Frempton and Kline came to me and asked for their bills. I commenced to make them out and after I commenced Mr. Cohen came to me and told me to wait a few minutes and he might save me some trouble; he went then and had a conversation with these parties and came and told me he had purchased the articles from them and he made out a couple of checks in my presence and gave them to these parties. He told me then to include them in the plaintiff's bill;" to which of these parties were said checks given by you?

A. Mr. Parker is mistaken in the way he states the case. I made no purchase from those parties. I made payments upon purchase made after the sale to Mr. Heller. I was requested by Mr. Heller who stated he had no funds with him to make these payments: I then drew my check, I believe, for the amount agreed upon between Heller and the parties.

Q. Did you draw a check or checks?
A. I believe I drew two checks for very small amounts.
Q. In whose favor?
A. I think in favor of Gallinger and Frank, I believe.
Q. For about what amount?
A. I think one check was $100 and the other $50.
Q. Were these all the checks you gave or money paid by you to these parties?
A. I can't recollect any other.
Q. Then no money was paid by you or check given to Frempton?
A. I didn't say so.
Q. What is the fact according to your best recollection?
A. I have no recollection as to any man named Frempton.
Q. Do you recollect of being instructed by Mr. Heller to pay any such man as Frempton any money?
A. I have no recollection on the subject.
Q. On the back of the execution in favor of Heller, against Schwed & Newhouse under which said sale was had, appear the following items of costs: Attorney, $5.25, prethonatary, $2; sheriff H., $45.20; sheriff, M., $1.50; attorney's commission, 5 per cent., $180.60; clerk, $10; insurance, $24; watchman, F., $27; watchman, H., $27; amounting in all to $322.55. Did you pay or settle with the sheriff for any portion of said costs, after applying thereto the cash receipts from said sale?

A. I have no recollection of the details of that transaction, but the costs must have been paid before the sheriff handed me Mr. Heller's bill of purchase. The attorney's commission I think we receipted for as though it were paid; that is the custom at the sheriff's office when the plaintiffs is one of the purchasers. I also receipted for the $5.25.

Q. I did not ask you to give the details, but asked you if you paid any portion of the costs?

A. My answer is as before, that the costs must have been paid either by deducting its amount from the cash proceeds of the sale, or, as is frequently the case, when the plaintiff becomes a large purchaser, if such

cash proceeds were not equal to the amount of the costs, the excess is then paid.

Q. Did not Mr. Heller return to Philadelphia the evening after the sale and were the costs not settled after that?

A. The costs were settled after the evening of the sale. I remember that from the fact that the sheriff remained in possession of the goods in store and that I did not receive any bill of sale as attorney for the plaintiff till a day or two afterwards. Whether Mr. Heller returned to Philadelphia or not, I am totally ignorant of.

Q. Did you receive the bill of sale of the goods bought by the plaintiff from the sheriff?

A. I did.

Q. Mr. Vincent Stevens in his deposition states it to be his recollection, that the plaintiff's goods were delivered to you the morning after the sale; was that the same time you received from the sheriff the bill of sale referred to?

A. Please show Vincent Stevens' testimony to that effect.

Plaintiff's counsel calls the attention of the witness to the last question and answer of the witness Stevens, as contained on page 16 of these depositions.

A. I am advised by the sheriff's office and I know it to be a fact, that Mr. Stevens is mistaken in saying such. The possession was not delivered nor did I receive the bill of plaintiff's purchases until the day after following the day of the sale; such is my recollection and I believe it to be so.

Q. If the sale was on February third, the possession and the bill of sale were not delivered to you then until February fifth, the second day after the sale?

A. My impression is that the sale was not concluded on February third, but that some articles were sold on the morning of February fourth; my impression is that I received the bill two days after the sale closed.

Q. On which day did you get possession of the goods purchased at said sale by the plaintiffs?

A. On the day that I received the bill of sale.

Q. How long after you received possession of the goods before Messrs. Schwed & Newhouse took possession?

A. I know nothing about it.

Q. How long did you retain possession and remain in the storeroom after you received possession?

A. As attorney for Mr. Heller I retained legal possession of the property that he had purchased for some days; they were in my legal custody. I cannot say how long I remained in the store.

Q. Did you have the key to the store at any time?

A. I believe I had.

Q. How long?

A. Can't say.

Q. When did you deliver it to Schwed & Newhouse or to either of them?

A. I have not said that I did so.

Q. Did you?

A. I think not.

Q. Were Schwed and Newhouse in the store on the day you

received possession and have they not from that day carried on the business at that stand which they have since continued to follow?

A. They were not, I believe, and as far as I am advised Schwed & Newhouse, as such, have not continued to carry on the business ever since but the business, as I understand, has been and is conducted by Mrs. Schwed, through her designated agents Schwed & Newhouse, agents, so named on the signs to my knowledge.

Q. What day after the sale was the store reopened and the business you refer to in your last answer commenced?

A. Several days after the sale, when I delivered possession in the name of Herman Heller, by his authority of a deed of gift to her of such articles as he had purchased at the sale.

Q. Was the store reopened before you so delivered possession?

A. I believe I was there once or twice, but I think it was not reopened for business purposes.

Q. Mr. Schwed has testified that he received back the store books on February fifth, 1880. Did you deliver possession that day; I mean the possession of the goods bought by the plaintiff at the sale which you say you delivered in his name by authority of a deed of gift?

A. I am not responsible for what Mr. Schwed says, and I have stated that I cannot recollect the exact day.

Q. Who were present in the store when you delivered possession of said goods?

A. Mrs. Schwed, herself, Mr. Schwed, also, and I believe some other parties who witnessed the delivery, but I can't say just now who, for I really don't remember, but I do remember giving formal possession to Mrs. Schwed.

Q. What act, if any, did you perform that was symbolical of the delivery of possession to Mrs. Schwed?

A. There was nothing symbolical about it. I delivered her the deed and the keys and the goods and the store room.

Q. In your judgment, as a lawyer, was said deed of gift properly executed and sealed according to the laws of this state, so as to pass the title to the property conveyed?

A. The thing itself was conveyed, I mean the goods as well as the deed which was properly and legally executed and acknowledged.

Q. Was said deed duly recorded, if such instruments are required to be recorded by your laws?

A. From an examination of the Recorder's office it could be ascertained.

Q. Do your laws require the recording of such instruments?

A. They do not, but sometimes such instruments are recorded.

Q. You did not record this one did you?

A. I myself did not, it was not my business.

JOSIAH COHEN.

Affirmed and subscribed before me, on the day, at the place, and between the hours aforesaid.

[SEAL.] FRANK W. HUGHEY,
Notary Public.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF PENNSYLVANIA, } SCT.

I, Frank W. Hughey, a Notary Public, in and for the City of Pittsburgh, county of Alleghany, and State of Pennsylvania, duly appointed,

qualified and acting as such, and under and by virtue of the several acts of congress, authorizing and regulating the taking of depositions *de bene esse*, in civil causes depending in the Circuit and District Courts of the United States, do hereby certify that the witnesses whose depositions are above set forth, are material and necessary to the proper determination of the said cause in the caption set forth and described, and that the said witnesses are residents of Pittsburgh and Alleghany City, in the county of Alleghany, and State of Pennsylvania. The same being at a greater distance than one hundred miles from Kansas City, Missouri. I further certify that a notice of the time and place of the taking of said depositions and the names of the witnesses to be examined, signed by Botsford and Williams and Scarrett and Riggins, attorneys for plaintiffs, was served on Bryant & Holmes, attorneys for defendants, on the twenty-fourth day of January, A. D., 1881, which said notice is returned herewith, marked "exhibit A. 1," and I further certify that I was attended at the office of George DeCamp, No. 160 Fourth avenue, Pittsburgh, Pennsylvania, aforesaid, by James S. Botsford and T. S. Parker, Esq's, attorneys for plaintiffs, and D. B. Holmes and Josiah Cohen, Esqr's, attorneys for defendants, and the witnesses, to-wit: Samuel Parker, Vincent Stevens, Edward Schwed and Josiah Cohen, who were of sound mind and lawful age, and were by me sworn and examined, and their examination by me reduced to writing, and subscribed by them in my presence, on the days and between the hours and at the place in that behalf aforesaid. I do further certify that I am not of counsel nor attorney for either of the parties to the suit in controversy, or in any way interested in the result of said suit.

In testimony whereof I have hereunto set my hand and seal this ninth day of February, A. D. 1881.

[SEAL.] FRANK. W. HUGHEY,
Notary Public.

ALLEGHENY COUNTY, }
STATE OF PENNSYLVANIA, } ss.

[SEAL.]

I, Arch H. Rowand, Jr., Clerk of the Court of Quarter Sessions, in and for the county of Allegheny, in the commonwealth of Pennsylvania, the same being a court of law and record, do by these presents certify that Frank W. Hughey, Esquire, before whom the foregoing depositions were taken, and who has thereunto, in his own proper hand-writing, subscribed his name was at that time and now is a notary public in and for said county, duly commissioned and sworn and authorized by law to take acknowledgements, administer oaths, &c, and to all whose acts as such, due faith and credit are and of right ought to be given throughout the United States, and elsewhere, and I further certify that the foregoing depositions were taken in accordance with the laws of the state of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at Pittsburgh, in the said county, this fourteenth day of February, in the year of our Lord, one thousand eight hundred and eighty-one.

A. H. ROWARD, JR.,
Clerk.

Upon the back of the above is the following writing: "50 cents paid by F. W. Hughey, Esqr."

Fees for raking the foregoing depositions:

350 folios, at 20 cents per folio	$70.00
Issuing two subpœnaes, 25c,	.50
Officer, eight services, 50c	4.00
Officer, mileage on same	.30
Administering four oaths	.40
Certificate from Clerk of Court	.50
Sealing up deposition box	.30
Registry and postage	15.13
	$91.13

Paid by Plaintiff.

Received payment in full from plaintiff.

FRANK W. HUGHEY,
Notary Public.

In the United States Circuit Court for the Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
vs.
EDWARD SCHWED *et al,*
Defendants.

Depositions filed February nineteenth, 1881.

H. C. GEISBERG,
Clerk.

United States Circuit Court Western District of Missouri.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS,
Plaintiffs,
against
EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY,
Defendants.

Testimony taken before J. M. Deud, clerk of the Circuit Court of the United States for the Southern District of New York, as special examiner under and pursuant to the Sixty-seventh Rule of the U. S. Supreme Court, as amended.

N. Y., March tenth, 1881.

Present, Jas. S. Botsford on the part of complainants, and Daniel G. Thompson and Mr. Creevey for defendants Schwed & Newhouse; Mayer Sulzburger and J. Abarbanell for defendant Heller.

Counsel for defendants objects to the examination of Mr. Schwed on the ground that the said Schwed has been already once examined fully and at length upon all matters pertinent to the issues herein, to-wit: At Pittsburgh, Pennsylvania, in February of this year.

Edward Schwed called as a witness on part of complainants, being duly sworn, deposeth and says :

Q. 1. Are you one of the defendants in this case, and the same Edward Schwed who gave a deposition about four weeks since at Pittsburgh, Pennsylvania?

A. I am.

Q. 2. What books kept by Schwed & Newhouse either for themselves or as professed agents of Mrs. Schwed, at Pittsburgh, during the years 1879, 1880 and 1881, have you produced here before the examiner ?

A. two day-books, two ledgers, one memorandum book, one invoice file.

Defendants' counsel objects to the production of the books on the ground that the same have once been prodnced for examination in this action and fully inspected and examined on all matters relating to the iilsues.

Q. 3. Are the two day-books, two ledgers, memorandum-book and invoice file named by you, all the books kept at Pittsburgh during the years named, that you have produced ?

A. They are not.

Q. 4. What other books have you produced, kept at Pittsburgh ?

A. No other books.

Q. 5. Why have not produced the cash-book kept at Pittsburgh for the same years that the two day-books and two ledgers were kept ?

A. Because I could not find it.

Q. 6. What search did you make for it ?

A. I searched among all my books in the office, and not finding it, I wrote to Pittsburgh, to the agent of the house in which our place of business was, and who has the key of the room we occupy, to please search for that book. I wrote the same thing to my wife.

Q. 7. Where were the day-books and ledgers when the order for their production was served on you ?

Objected to as immaterial.

A. In our office.

Q. 8. What office ?

A. The business place of Mrs. Schwed.

Q. 9. What is the city, street and number of said business place ?

Same objection.

A. At number 10 Maiden Lane, New York.

Q. 10. When did you bring said day-books and ledgers to that office from Pittsburgh ?

Same objection.

A. About the middle of February.

Q. 11. How did you bring them ?

Same objection.

A. They were packed in a box.

Q. 12. And how shipped ?

A. By frieght; by Pennyslvania railroad.

Q. 13. Who packed the books in the box?

Same objection.

A. I did.

Q. 14. How long after the taking of the Pittsburgh depositon was this?

Same objection.

A. A few days.

Q. 15. What other books besides the books produced here from Pittsburgh did you pack in the box?

A. As far as I can recollect all the books we previously used.

Q. 16. When you packed these books you were removing the Pittsburgh business to New York were you not?

Objected to as immaterial.

A. Yes, sir.

Q. 17. And you designed to remove everything belonging to the concern, did you not?

It is stipulated that the right to object to the reception of any testimony offered by eithe. party on the hearing of this cause, on the grounds of irrelevancy, incompetency, illegality, or other legal objection made, may be made at such hearing without now being specially noted or saved.

A. Yes, sir.

Q. 18. Including the cash-book referred to?

A. Yes, sir.

Q. 19. Where were the day-books, ledgers, and cash-book kept up to the time of making the removal?

A. During the day in the book-case; at night in the safe.

Q. 19. Were they kept together?

A. They were.

Q. 21. Do you mean to say that the cash-book referred to was not put in the box when you packed the other books and before they were shipped?

A. I do not.

Q. 22. Was it put in or not?

A. I thought it was

Q. 23. Don't you know it was.

A. I do not.

Q. 24. Have you discovered whether any other books were left or not?

A. So far I did not.

Q. 25. When you made search for the cash-book did you find all the other books?

A. I cannot tell.

Q. 26. Have you produced all the other Pittsburgh books except the cash-book?

A. I think I have with the exception of discount book which is annexed to my Pittsburgh deposition as an exhibit.

Q. 27. Then the cash-book for 1879, 1880 and 1881 is the only missing book?

A. So far I know.

Q. 28. When did you make the search for that book you have stated you made?

A. A few days after we came here.

Q. 29. How many days since?

A. I can't exactly tell.

Q. 30. Was it last week?

A. No, sir; it was before last week.

Q. 31. Why did you make the search?

A. Because I wanted to make some entries.

Q. 32. How much of a search did you make for it?

A. I looked amongst all the other books.

Q. 33. Did you look nowhere else; in among the other books?

A. Also in the books where the books were packed.

Q. 34. Did you look anywhere else?

A. Nowhere except around the office.

Q. 35. Who unpacked the box when it arrived here?

A. I did.

Q. 36. Was said cash-book in the box when it arrived here?

A. I don't know.

Q. 37. If you unpacked the box, don't you know if the cash-book was in the box at the time?

A. I didn't pay any particular attention.

Q. 38. You were notified specially on the conclusion of the Pittsburgh deposition, to carefully preserve all the Pittsburgh books, so that they might be produced if the court so order, were you not?

Objected to on the ground that the record of this case will show if such a notice was given or not.

A. Yes, sir.

Q. 39. Why have you not preserved them?

A. I did to the best of my ability.

Q. 40. Do you swear that you do not know where said cash-book is?

A. I do.

Q. 41. Do you swear that it is not in your custody or possession at the present time?

A. I do.

Q. 42. This is the same cash-book from which you gave in your cross-examination at Pittsburgh, that part of the alleged transactions of Schwed & Newhouse with defendant Heller from some time in 1876 down to 1879, inclusive, is it not?

A. It is.

Q. 43. And is it the same cash-book which you designated in said deposition as cash-book number two?

A. It is.

Q. 44. To whom, did you say a few moments ago, you have written concerning this book; please give their names?

A. Mr. Hunker; I don't know his first name, he is the man who rents or has charge of the house?

Q. 44. Did you deliver over the key to this agent or to the owner of the property when you left Pittsburgh?

A. I did.

Q. 46. Was there anything in the room when you delivered possession?

A. Lots of boxes and old waste paper.

Q. 47. Anything else?
A. Not that I know of.
Q. 48. From what did you take the books when you packed them in the box?
A. From the book-case.
Q. 49. What became of the book-case?
A. It was sold with the balance of the fixtures.
Q. 50. Where in the store or office was said book-case kept while being used and before it was sold?
A. It was fastened to the wall.
Q. 51. How far above the floor?
A. I can't tell.
Q. 52. How far was the bottom of the book-case from the floor?
A. I can't tell exactly.
Q. 53. Were there any doors on the book-case, and if so what kind of doors?
A. One door; a wooden door.
Q. 54. How was the door fastened?
A. It was fastened with a key.
Q. 55. Who bought this book-case?
A. Mr. Harter, at Steubenville, Ohio.
Q. 56. How long before you left was the sale made?
A. About six weeks before.
Q. 57. When did he take the book-case away from the store-room?
A. I shipped all the fixtures the day I left.
Q. 58. Was said cash-book No. 2, in the book-case when you shipped it to him?
A. Not that I know of.
Q. 59. Don't you know that the book-case was empty when you shipped it?
A. I supposed it was.
Q. 60. Why have you not produced here the book of bills receivable kept after 1878?
A. I was not asked.
Q. 61. Was you asked to produce any books?
A. I was, but the bills-receivable was not called for.

Defendant's council offers to produce the bills receivable book if desired.

Q. 62. Why have you not produced the bank pass-books kept during 1879, 1880 and 1881?
A. I destroyed it with some other old papers in Pittsburgh not having any further use for it.
Q. 63. Did you destroy any other books?
A. Some other bank pass-books, invoice files and all old correspondence.
Q. 64. Were any other books besides the bank pass-books and invoice files destroyed?
A. No, sir.
Q. 65. Was the bank pass-book destroyed one of the books which you had before the notary giving your deposition in Pittsburgh?
A. It was not; I destroyed all the bank pass-books.
Q. 66. What years were covered by the pass-book that was destroyed?

A. I can't remember.

Q. 67. Was it the last pass-book kept by Schwed & Newhouse previously to the levy made by the sheriff at Pittsburgh, or was it a pass-book kept before that last pass-book?

A. I suppose I destroyed all the pass-books kept by Schwed & Newhouse up to my removal to New York.

Q. 63. Did you not give testimony at Pittsburgh from one of your pass-books of the amount of moneys deposited in 1879?

A. I cannot recollect any more.

Q. 69. If you gave such testimony, is the pass-book which contained the deposits for 1879 one of the books that was destroyed?

A. I suppose it was.

Q. 70. Don't you know whether it was destroyed or not?

A. I cannot remember.

Q. 71. Have you any Pittsburgh pass-books at the present time?

A. I don't think I have.

Q. 71. Don't you know whether you have or not?

A. I can't tell here; I will have to look.

Q. 73. Will you look at the noon-adjournment and bring any pass-books that are not destroyed?

A. I will.

Q. 74. What became of the pass-book kept by Schwed & Newhouse as agents in 1880?

A. I suppose it was destroyed among the rest.

Q. 75. Are you carrying on the same business in New York that you were carrying on in Pittsburgh when you left there?

A. We are.

Q. 76. Then why did you destroy one of the books of that business when you left Pittsburgh?

A. I destroyed the pass-books and papers because I had no further use for them.

Q. 77. About how may pass-books were there destroyed?

A. I don't know.

Q. 78. Were there as many as half a dozen?

A. I can't tell.

Q. 79. Back to about what time did those pass-books run in the transactions which they contained?

A. It contained all the pass-books we ever had in use in Pittsburgh, I suppose.

Q. 80. Describe how these books were destroyed?

A. I burnt them up in my yard with the old correspondence I had so as not to have to take them in here as I had no further use for them.

Q. 81. About how many days since you wrote to the parties named by you respecting said cash-book?

A. I can't remember days no more.

Q. 82. Was it last week?

A. To Mr. Hunker I think I wrote last week; to my wife about a week sooner.

Q. 83. Which part of last week did you write to Mr. Hunker.

A. I can't remember.

Q. 84. Was it before or after the order for the production of the books was served on you by the marshal?

A. I cannot recollect.

Q. 85. Have you received any response or reply to either of those letters?

A. I have an answer from my wife.

Q. 86. Have you received no reply from Mr. Hunker?

A. I have not; my wife called on Mr. Hunker for the key when he went with her to the room in search of the book.

Q. 87. How do you know this?

A. Because my wife wrote me so.

Q. 88. What else did your wife say about the book?

A. They could not find it.

Q. 89. Have you the letter with you that your wife wrote on the subject?

Objected to, as no notice has been given for the production of the letter.

A. I have.

Q. 90. Will you produce it when we meet after the noon adjournment?

Objected to; no proper notice or process having been served on the witness requiring the production of such letter, and also as incompetent.

A. I will.

Q. 91. What books kept by Schwed & Newhouse, at Kansas City, have you produced here?

A. Ledger, cash-book, collection-book, invoice file and memorandum-book.

Q. 92. When were these books brought to New York, and from where?

A. The ledger and invoice file we received in Pittsburgh, with some other papers, sometime after Mr. Newhouse left Kansas City, and the other books we received last Saturday by express. The books received at Pittsburgh from Kansas City were bronght here when we removed to New York with the Pittsburgh books.

Q. 93. Are any of the Kansas City books that were brought to Pittsburgh as stated, missing?

A. No, sir; we only had the ledger.

Q. 94. I observe that during the years 1879, 1880 and 1881 two ledgers were kept at Pittsburgh. Will you state what business was recorded in one ledger and what business in the other?

A. One ledger contained accounts for customers; the other the accounts of the houses we bought from?

Q. 95. Will you please point out to me which ledger contains the accounts of your customers?

A. Witness here hands counsel ledger containing the accounts of customers.

Q. 96. Will you turn to page one, of said ledger, and state how much George Henry owed Schwed & Newhouse, February fifth, 1880?

Objected to by Mr. Sulzberger of counsel for Mr. Heller, one of the defendants, upon the ground of its utter irrelevancy, the only possible object being to find something to attach to the event of the plaintiff's failure in this suit.

A. $83.

Q. 97. Has that been paid to Schwed & Newhouse, and if so, when?

It is agreed on behalf of the complainants and the defendant Heller, that the defendant reserves the right and may make all objections on the hearing of this cause, to any question or answer, for any reason whatever, without being specially noted or saved at this time.

A. It has. March tenth, $33.50; June eighth, $49.70.

Q. 98. On what other books than said ledger were said payments entered?

A. In the day-book?

Q. 99. Any other book?

A. No, sir.

Q. 100. Turn to page four and state how much John Brenner owed Schwed & Newhouse February fifth, 1880?

A. $83.78.

Q. 101. Has that amount since been paid to Schwed & Newhouse?

A. It has.

Q. 102. Give the dates of the payments?

A. February twenty-first 1880, $24.87; March twenty-fourth, 1880, $58.91.

Q. 103. Were those payments entered on the day-book those dates?

A. They were.

Q. 104. State at what time the last items of goods amounting to $83.20 was purchased by George Henry, for which he owed you February fifth, 1880?

A. November and December, 1879.

Q. 105. State when John Brenner bought the goods amounting to $83.78 for which he owed you February fifth, 1880?

A. September and November, 1879.

Q. 106. Turn to page six of the ledger and state how much C. G. Webber owed Schwed & Newhouse February fifth, 1880?

A. $136.68.

Q. 107. When were the goods sold to Mr. Webber for which he owed that amount?

A. October, November and December, 1879.

Q. 108. Has that debt been paid since February fifth, 1880?

A. It has.

Q. 109. What date and to whom?

A. February twentieth, 1880, by note paid to us.

Q. 110. Has that note been paid?

A. It has.

Q. 111. Turn to page nine and state how much A. G. Weber owed Schwed & Newhouse, February fifth, 1880?

A. $226.42.

Q. 112. When were the goods sold to him for which he owed that sum?

A. About September, October, November, and December, 1879.

Q. 113. Has that bill been paid since February fifth, 1880, if so give the date?

A. It was paid February twentieth, 1880, by note.

Q. 114. Has that note since been paid.

A. It has.

Q. 115. Were the two last items of note entered on the day-book at the date they were given?

A. They were.

The witness produces the book of bills receivable and the letter from Mrs. Schwed, asked for by counsel for complainants.

Q. 116. Turn to page eight, and state how much I. Karr owed Schwed & Newhouse February fifth, 1880?

A. $30.20.

Q. 117. When were the goods sold to Mr. Karr for which he owed that amount?

A. September eleventh, 1879.

Q. 118. Has Mr. Karr paid that bill since February fifth, 1880, if so give the date.

A. It was paid February sixteenth, 1880.

Q. 119. Was the payment entered on the day-book of that date?

A. It was.

Q. 120. Turn to page nine and state how much O. E. Heineman owed Schwed & Newhouse February fifth, 1880?

A. $126.63.

Q. 121. When were the goods sold to him for which he owed that amount?

A. August and November, 1879.

Q. 122. Has that bill been paid by him to you?

A. It has.

Q. 123. When?

A. January, March and July, 1880. I was mistaken as to the amount he owed February fifth, 1880; he owed $76.63; that was paid March twenty-second and July sixth, 1880.

Q. 124. Were those payments entered on the day-book of those dates?

A. They were.

Q. 125. Turn to page ten, and state how much Thomas J. Brown owed Schwed & Newhouse, February fifth, 1880?

A. $51.62.

Q. 126. When were the goods sold to Mr. Brown for which he owed that amount?

A. December, 1879.

Q. 127. Has he since paid that bill, and if so, on what day?

A. It was paid December, 1880, and January, 1881.

Q. 128. Were those payments entered on the day-book of those dates?

A. They were.

Q. 129. Turn to page eleven, and state how much Emil Young owed Schwed & Newhouse February fifth, 1880?

A. $158.83.

Q. 130. When were the goods sold to Mr. Young for which he owed that sum?

A. About March and April 1879.

Q. 131. Has that bill been paid by Mr. Young, and if so, when?

A. It has by notes and part cash; May twenty-seven, 1780, December fourteenth, 1880.

Q. 132. How much was the note given for?

A. I can't remember without referring to the day-book.

Witness refers to the day-book and states: "The bill was paid by notes $139, and cash $20."

Q. 133. Have those notes since been paid?

A. They have.

Q. 134. Were the payments of this bill entered on the day-book the dates they were made?

A. They were.

Q. 135. Turn to page twelve and state how much Reuben Lyon owed Schwed & Newhouse February fifth, 1880?

A. $10.

Q. 136. When were the goods sold to him for which he owed that sum?

A. November seventh, 1879.

Q. 137. Has he paid it, and if so, when?

A. He has, February eleventh, 1880.

Q. 138. Was that payment entered on the day-book of that date?

A. It is included in the $50.00 entered on that date.

Q. 139. On what account does the balance of that $50 paid that day apply?

A. On account of money advanced; $100 advanced that day to take up this note.

Q. 140. When were those notes made; before or after February fifth, 1880?

A. Before.

Q. 141. Were the payment of these notes and the $10 that was applied on the bill entered on the day-book the dates the payments were made?

A. When the notes were paid they were not entered on the day-book.

Q. 142. Was the $50 of cash that included the $10 that paid the bill entered on the day-book?

A. It was.

Q. 143. Please explain fully the transaction to which you have referred, namely, the payment of $100 for Mr. Lyon, and the payment by him to you of $50.00.

A. We sent to a bank in Baltimore when Mr. Lyon's note to us, that we had endorsed, was due, $100, to pay that note, for which he sent us his check for $50 and a new note for $50, consequently those $10 was not paid at that time as I stated before, but was settled afterwards through some note.

Q. 144. And since paid?

A. I can't tell exactly; he owed us $73 and compromised for $30, so I can't tell whether those $10 are paid or not.

Q. 145. Did this compromise cover the $10 and transactions also since February fifth, 1880?

A. We did not sell him any goods since November, 1879, but renewed his notes when he couldn't pay them, from time to time.

Q. 146. On what books was the payment of the $100 to the bank at Baltimore entered?

A. On the day-book.

Q. 147. Was that payment by a check or currency?

A. I can't remember.

Q. 148. Turn to page seventeen and state how much A. Dold owed Schwed & Newhouse February fifth, 1880?

A. $35.86.

Q. 149. When were the goods sold to him for which he owed that amount?

A. September and November, 1879.

Q. 150. Has he since paid the bill?

A. It was paid February and March, 1880.

Q. 151. Were the payments entered on the day-book at the dates they were made?

A. They were.

Q. 152. Turn to page eighteen and state how much D. L. Cleeland owed Schwed & Newhouse February fifth, 1880?

A. $81.26.

Q. 153. When were the goods sold him for which he owed that amount?

A. November and December, 1879.

Q. 154. Has said bill been paid, and if so, give the dates and amounts paid.

A. It was paid March fifth, 1880, $35; March twentieth, 1880, $49.76.

Q. 155. How much was the amount of those payments.

A. $84.76.

Q. 156. How much more than the bill of $81.26 did that pay and on what was the balance applied?

A. $3.50, that belonged to Mrs. Schwed.

Q. 157. How does it belong to her?

A. For a bill sold by her to Cleeland March tenth, 1880, $3.50.

Q. 158. Please turn to the day-book and give the language of the entries therein of these two payments?

A. March fifth, 1880, D. L. Cleeland, cr. by cash $35.00; March twentieth, 1880, cr. by cash, $49.79.

Q. 159. Is this account on page eighteen of the ledger, of accounts of Schwed & Newhouse with their customers, the way accounts were kept where they embraced transactions that occurred both before and after February fifth, 1880?

A. They were in some instances.

Complainants here request the examiner to make and return with this deposition a copy of said account of D. L. Cleeland on page eighteen of said ledger, which is done accordingly and marked complainants' exhibit "A."

Q. 160. What portious of th eentries on this page relate to the business of Schwed & Newhouse and what portion relates to what you claim to have been the business of Mrs. Schwed?

A. Goods sold to December thirtieth, 1879, were for account of Schwed & Newhouse, those sold afterwards were on account of Mrs. Schwed.

Q. 161. Were either of the payments of $35.00 or $49.76 entered on the cash-book?

A. They were not.

Q. 162. All cash items that were entered at that time in the cash-book were entered in the cash-book that is missing, were they not?

A. They were.

Q. 163. Turn to page nineteen aud state how much Wm. M. Nicholson owed Schwed & Newhouse, February fifth, 1880?

A. $850.89.

Q. 164. When were the goods sold for which he owed that amount?

A. A few years previous to that time; it is an old account running.

Q. 165. Has he paid that account, and if so give the date?

A. He settled with notes but they are not paid yet. He settled April fifth, 1880, with the notes.

Q. 166. Was that settlement entered on the day-book of that date?

A. It was.

Q. 167. Turn to page 20 and state how much J. C. Curran owed Schwed & Newhouse February fifth, 1990?

A. $252.63.

Q. 168. When were the goods sold for which he owed that amount?

A. Sometime in 1878, I believe, no sales in 1879.

Q. 169. Has he since paid the amount of that bill, if so give the date?

A. It was paid August sixth, 1880.

Q. 170. And entered on the ledger and day-book that day, was it?

A. Yes, sir.

Q. 171. Turn to page 21 and state how much S. Scherzinger owed Schwen & Newhouse February fifth, 1880?

A. $56.78.

Q. 172. When were the goods sold for which he owed that amount?

A. December, 1879, and January, 1880.

Q. 173. Has that bill been paid, if so give the date?

A. It was paid April twenty-third, 1880.

Q. 174. And entered in the ledger and day-book of that date, was it?

A. Yes, sir.

Complainants' counsel here requests the examiner to make a copy of the account of S. Scherzinger, on page 21 of this ledger, and return with this deposition, which is accordingly done and marked exhibit "B."

Q. 175. Please turn to page 23 and state how much L. Miller owed Schwed & Newhouse February fifth, 1880?

A. $140.21.

Q. 176. When were the goods sold to her for which she owed that amount?

A. October, November and December, 1879, and January, 1880.

Q. 177. Has she paid the bill, if so give the date?

A. It was paid April, May, July and September, 1880.

Q. 178. And entered in the ledger and day-book of those days, were they?

A. They were.

Complainants' counsel here requests the examiner to make a copy of the account of L. Miller, on page 23 of this ledger, and return the same with his deposition which is accordingly done and marked complainants' exhibit "C."

Q. 179. Turn to page 26 and state how much L. C. Bullard owed Schwed & Newhouse February fifth, 1880?

A. $87.38.

Q. 180. When were the goods sold to him for which he owed that amount?

A. February, March, June and October, 1879.

Q. 181. Has that bill been paid, if so give the date?

A. It has not been paid.

Q. 182. Has any portion of it been paid?

A. No, sir.

Q. 183. Please turn to page 30 and state how much Joseph Miller owed Schwed & Newhouse February fifth, 1880?

A. $188.91.

Q. 184. When were the goods sold for which he owed that bill?

A. August, October, November, December, 1879.

Q. 185. Has he paid that bill, if so give the date?

A. It was paid February and March, 1880.

Q. 186. And entered on the day-book and ledger the dates when the payment of the bill were made, were they?

A. Yes.

Q. 187. Turn to page 33 and state how much W. Hackler owed Schwed & Newhouse, February fifth, 1880?

A. $74.90

Q. 188. When were the goods sold for which he owed that amount?

A. December, 1879, and January, 1880.

Q. 189. Has that bill been paid, and if so give the date?

A. It was paid February eleventh and twenty-seventh, 1880.

Q. 190. And entered on the day-book and ledger of those dates, were they?

A. Yes, sir.

Q. 191. Turn to page 36 and state how much M. Hinckley owed Schwed & Newhouse February fifth, 1880?

A. $91.44.

Q. 192. When were the goods sold for which he owed that bill?

A. November, 1879.

Q. 193. Has that bill since been paid, and if so give the dates and amounts of the several payments?

A. It has only been partly paid, namely: April twentieth, 1880, $10.00; June fourteenth, 1880, $20.00.

Q. 194. Was any payment made August nineteenth, 1880, by Mr. Hinkley, by note or otherwise, if so give the amount?

A. We received on that day a note for $126.67 from Mr. Hinckley.

Q. 195. What was that note given for?

A. It was given for a balance of $61.44 due to Schwed & Newhouse on the bill of $91.48 and $65.23 due to Mrs. Schwed.

Q. 196. How was the $65.23 due to Mrs. Schwed?

A. For goods sold by her.

Q 197 Do you mean the goods that appear in said account on page 36 from February twenty-first, 1880, to June eighteenth, 1880?

A. I do.

Q. 198. This note, $126.67, was a single note, was it?

A. It was.

Q. 199. To whom was it made payable?

A. I cannot recollect.

Q. 200. What is your best impression as to whom you made payees in the note?

A. I can't tell now.

Q. 201. Has the note since been paid to you?

A. Only $30.00 has been paid on it. This note was renewed by his paying $30.00 and his giving a new note for $96.67, which is not paid yet. This renewal is the last item in the account.

Q. 202 This note and renewal and cash payment were all entered on the day-book and on the book of bills receivable and ledger on the days they were made, were they?

A. Yes, sir.

Complainants' counsel requests the examiner to make a copy of the account of Mr. Hinckley, on page 36 of said ledger, and return with this deposition, which is accordingly done and marked complainants exhibit "D."

Adjourned to March eleventh, 1881, at 10 A. M.

NEW YORK, March 11, 1880.
10 o'clock, a. m.

Present, counsel for respective parties.

Examination of Edward Schwed resumed.

Q. 203. Turn to page thirty-eight and state how much Studer & Frodey owed Schwed & Newhouse February fifth, 1880?

A. $126.59.

Q. 204. When were the goods sold for which he owed that sum?

A. December 1879, and January 1880.

Q. 205. Has that bill been paid, if so, give the date?

A. I was paid February eighteenth, 1880, by note.

Q. 206. Has that note been paid?

A. It has.

Q. 207. Was the giving of the note entered on the ledger and day-book the day it was given.

A. It was.

Q. 208. Turn to page forty and state how much C. Scharback owed Schwed & Newhouse February fifth, 1880?

A. $445.03.

Q. 209. When were the goods sold for which he owed that?

A. During the year 1879.

Q. 210. Has that bill been paid, if so, give the date?

A. It was paid February eighteenth and twenty-fourth, by notes.

Q. 211. Have those notes been paid?

A. They have.

Q. 212. Were the giving of these notes entered on the day-book and ledger the dates they were given?

A. They were.

Q. 213. Turn to page 43, and state how much M. L. McGiffin owed Schwed & Newhouse February fifth, 1880?

A. $9.00.

Q. 214. When were the goods sold for which he owed that sum?

A. December thirtieth, 1879.

Q. 215. Has it been paid, if so, give the date?

A. It was paid March fourth, 1880.

Q. 216. And the payment entered on the ledger and day-book of that date, was it?

A. Yes.

Q. 217. Turn to page forty-six and state how much James McKee owed Schwed & Newhouse February fifth, 1880?

A. $91.66.

Q. 218. When were the goods sold for which he owed that sum?

A. August, September and December.

Q. 219. Has that bill been paid, if so, give the date?

A. It has been paid; February tenth and May third, 1880.

Q. 220. And entered on the ledger and day-book of that date, were they.

A. They were.

Q. 221. Will you now, in the same manner in which you have testified to the preceding customers' accounts from this ledger, give the amounts that were due Sehwed & Newhouse from their other customers, whose accounts are posted on pages 47, 48, 49, 52, 54, 55, 57, 58, 59, 60, 62, 289, 290, 291, 293, 295, 296, 297, 299, 300, 301, 303, 306, 310, 311, 313, 315, 317, 318, 320, 321, 322, 323, 324, 325, 326, 327, 328 and 330, giving the names as you proceed of each customer, the amounts they respectively owed February fifth, 1880, the year and month when the goods for which they owed were sold to them, and the dates when payments were made by them to Schwed & Newhouse?

A. I will. On page 47, W. J. Sarver, $311.39, goods sold November and December, 1879, paid February twentieth, 1880, by note, which note has been paid. On page 48, Trenkley & Scherzinger, $104.62, goods sold December third, 1879, paid March eighth, 1880. On page 49, Scharnke & Will, $14.00, goods sold December tenth, 1879, and January thirteenth, 1880, paid June twenty-first, 1880. On page 52, Mrs. E. J. Boehme & Son, $416.78, goods sold November and December, 1879, paid February eighteenth, 1880, by note since paid. On page 54, Theo. Weber, $117.02 goods sold December, 1879, paid March, April and August, 1880. On page 55, Jacob I. Strauss, $8.48, goods sold November, 1879, paid April second, 1880. On page 57, S. L. Fleischman & Co., $3.79, goods sold January, 1880, and paid April, 1880. On page 58, W. Wilson, $128.15, goods sold December, 1879, and January, 1880, paid February twentieth, 1880, by note since paid. On page 59, E. DeRoy, nothing, February five 1880. On page 60, Winkler & Espenschied, $207.33, goods sold September, October, November, December, 1879, and January 1880, paid February twentieth, March sixteenth, April twenty-fourth, May twentieth, August second, October twenty-third, 1880. On page 62, C. F. Kesselmire, $1,186.06, goods sold during 1879 and January, 1880, by notes February fourteenth and twenty-third, 1880, notes since paid. On page 289, Arnold Brothers, $112.62, goods sold October and December, 1879, paid April twenty-third and June fifteenth, 1880, also on page 289, Terrill & Price $14.52, goods sold October, 1879, paid March fifth, 1880. On page 290, M. Smith, $203.12, goods sold October and November, 1879, paid February twenty-sixth by cash $25 and April twenty-eighth notes $178.12, notes since paid. On page 291, George W. Briggs, $24.75. goods sold June and October, 1879, paid March 15th, 1880. On page 293, W. D. Glenn, $32.62, goods sold about two years ago, paid February, April, June, 1880, and January, 1881. On page 295, W. Kummer, $102.00, goods sold November 10th, 1879, paid March 31st, by cash, $25.00, and June 30th by note; since paid. On page 296, B. Ashley, $76.33, goods sold November 24th, 1879, paid April and June, 1880. On page 297, Charles Volkman, $74.08, goods sold June, September, December, 1879, paid February 21st, and October 23rd, 1880. On page 299, P. Smith & Co., $111.43, goods sold October, 1879, and January, 1880, March, 27th, 1880. On page 300, I. Tschudy, $47.75, goods sold about two years ago, paid March 31st, 1880, $5.00. On page 301, J. H. Mulholland, $97.75, goods sold October, 1879, paid April 6th, and May 31st. On page 303, A. R. Feistel, $58.36, goods sold September, and October, 1879, paid April, August, and October, 1880. On page 306, C. Terheyden, $117.32, goods sold July, August, September, November, December, 1879, and January, 1880, paid February, March, and April, 1880; also on page 306, E. P. Roberts & Co., $81.62, goods sold

January, 1880, paid February 10th, 1880. On page 310, M. Judd, $70, goods sold November 28th, 1879, paid April 5th, 1880. On page 311, Delbridge & Till, $30.00, goods sold May 7th, 1879, paid February, May, August and September and October 1880. On page 313, Ed. Wood, $169.84, goods sold October, November and December, 1879, paid May, June, and August, September, 1880. On page 315, S. J. Rodberg, $21.24, goods sold June and September, 1879, paid February 14th, 1880; also page 315, Frank A. Cummings, $37.45, goods sold November 6th, 1879, paid March 10th, 1880. On page 317, B. Volk, $4, goods sold December 17th, 1879, paid April 6th, 1880. On 318, Mrs. B. Schwerer, $68.03, goods sold December 4th, 1879, paid March, April, July, and August, 1880. On page 320, C. R. Cummings, $255.20, goods sold November and December, 1879, paid on account, March, June and July, $105.00. On page 321, William Hunt, $19.30, goods sold September 1st, 1879, paid March 25th, 1880. On page 322, M. Isenthal, $36.15, goods sold October 7th, 1879, paid May 26th, 1880. On page 323, W. F. Guile, $161.31, goods sold October and December, 1879, paid March, April and July, 1880. On page 324, A. Geck, $20.35, goods sold October 13th, 1879, paid April 3d, 1880; also page 324, Joseph Eikhoff, $67.55, goods sold October and December, 1879, paid February 19th, and May 6th, 1880. On page 325, Leo Braun, $67.40, goods sold October 20th, 1879, paid March 8th and July 23rd 1880. On page 325, G. Muller, he owed nothing February 5th, 1880. On page 326, Frederick Akers, $62.97, goods sold November, and December, 1879, paid May 22d, 1880. On page 327, Max Weye, $17.37, goods sold November 11th, 1879, paid May 7th, 1880. On page 328, O. H. Remington, $129.60, goods sold November 24th, 1879, paid by notes, $104.60, notes since paid. On page 330, P. G. Cochran & Co., $20.51, goods sold January 20th, 1880, paid February 23d, 1880.

Q. 222. Were the payments, referred to in the last answer, entered in the ledger and day-book at the times they were respectively paid?

A. They were.

Q. 223. Was this ledger, as to which you have testified, as to the accounts of customers regularly and correctly kept, and the transactions therein recorded entered at the times of their occurrence in the regular course of business?

A. I think they were.

Counsel for complainants here requests the examiner to make and return with this deposition, copies of the accounts of Charles Volkman, page 297; W. D. Glenn, page 293; Ed Wood, page 313; C. R. Cummings, page 320, and Leo Braun, page 325.

Which is accordingly done and marked Complainant's Exhibits E, F, G, H, and I, respectively.

Q. 224. What is this book, handed you?

A. It is the bills-receivable book.

Q. 225. By whom was it kept, and during what period does it cover?

A. Kept by myself for Schwed & Newhouse, up to February 5th, 1880; afterwards for Mrs. Schwed. The period of the time covered by the book is from August 9th, 1878, up to date.

Q. 226. Was the book correctly kept in the regular course of business?

A. I think it was.

Q. 227. And the entries therein recorded, entered at the time fo their occurrence, were they?

A. They were.

Q. 228. Whose business do you say is recorded therein since February fifth, 1880?

A. Mrs Schwed.

Q. 229. What is the number of the last note registered for Schwed & Newhouse, and the number of the first note registered for Mrs. Schwed?

A. I cannot give that.

Q. 230. Why?

A. Because they are not separated.

Q. 231. What is not separated, and do you mean that after February fifth, 1880, the notes of Schwed & Newhouse, and the notes which you claim belong to Mrs. Schwed are registered together on the same pages of the book of bills receivable?

A. The notes are not separated in the book. Both classes of notes are recorded on the same pages with the difference that they are marked "S. & N.," that belonged to Schwed & Newhouse, and those belonging to Mrs. Schwed are marked "S. & N., agt's."

Q. 232. Please refer to said book and state the numbers and amounts of notes held by Schwed & Newhouse, February fifth, 1880, that have since been paid to them.

A. It is impossible, because the greater part if not all were discounted

Q. 233. Does your books of bills receivable show that any notes that became due to Schwed & Newhouse were discounted?

A. It does not. But our discount book will show, the same being attached as an exhibit to my Pittsburgh deposition in this action.

Complainant's counsel here requests the examiner to make and return with this deposition copies of the pages of said book of bills receivable, which contain a record of notes from No. 977 to 1090, inclusive, which is accordingly done, and marked complainant's exhibit "K."

Q. 234. Please state whether the notes numbered from 1053 to 1071 arose out of the business at Pittsburgh or the business at Kansas City?

A. The first four arose from the business at Kansas City. From 1057 to 1066, inclusive, arose from the business at Pittsburgh; from 1067 to 1069, inclusive, arose from the business at Kansas City; 1070 and 1071 arose from the business in Pittsburgh.

Q. 235. Please state out of what business notes from 1072 to 1090 arose?

A. 1072 and 1073 arose from the Pittsburgh business of Schwed & Newhouse; 1074 and 1075 arose from the Pittsburgh business of Mrs. Schwed; 1076 to 1081, inclusive, 1086 and 1090 belong to Schwed & Newhouse, and arose from the Pittsburgh business. The others on that page belong to Mrs. Schwed.

Q. 236. What is the book handed you?

A. It is the Kansas City ledger of Schwed & Newhouse.

Q. 237. Does that ledger contain the accounts of bills of customers of that firm?

A. I do not know because I did not keep it.

Q. 238. Who kept that book?

A. I suppose Mr. Newhouse.

Q. 239. Do you know about how much Schwed & Newhouse owed February fifth, 1880, for merchandise bought by them prior to that date?

A. I cannot tell exactly.

Q. 240. What is this book handed you?

A. The ledger of Schwed & Newhouse containing the accounts with our creditors; it contains the account of goods bought and money borrowed with the exception of our indebtedness to Mr. Heller.

Q. 241. Is Mr. Heller the only person from whom you claim to have borrowed money and to have been indebted with whom you kept no account in this book?

A. He is.

Q. 242. Does the book contain accounts of all the goods bought by Schwed & Newhouse and all the loans made to them except in the case of Mr. Heller.

A. It does.

Q. 243. Was this ledger correctly kept in the regular course of business?

A. I think it was.

Q. 244. Were the transactions therein recorded correctly entered at the time of their occurrence?

A. I think they were.

Q. 245. Turn to page 150 of said ledger and state how much you owed William Smith & Co., February 5th, 1880?

A. $3,829.71.

Q. 246. Is that amount still due them from Schwed & Newhouse?

A. It is.

Q. 247. For what was that indebtedness incurred?

A. For goods bought by Schwed & Newhouse from Smith & Co.

Q. 248. During what months and years were the goods bought for which this indebtedness was incurred?

A. From November 1878 to November 1879.

Q. 249. Is this the William Smith & Co. who form a portion of the plaintiffs in this case?

A. I believe they are.

Q. 250. Turn to page 74 and state how much Schwed & Newhouse owed W. C. Greene & Co., February 5th, 1880?

A. $1,012.93.

Q. 251. For what was that debt incurred?

A. For goods bought by Schwed & Newhouse of Wm. C. Greene & Co.

Q. 252. Is that debt still due and unpaid?

A. It is.

Q. 253. When were the goods bought for which it was contracted?

A. August, September, November, 1879.

Q. 254. Is this the same firm that is a portion of the plaintiffs in this case?

A. I believe it is.

Q. 255. Turn to page 152 to 158 and state how much you owed February 5th, 1880, to the Seth Thomas Clock Company, of New York and Chicago?

A. On page 152, $503.46; that is to the New York house. On page 158, $906.10; that is to the Chicago house.

Q. 256. Is this for goods bought by you from that concern?

A. It was.

Q. 257. When were they bought?

A. September, October, November, December, 1879, and January, 1880?

Q. 258. Are those amounts still due and unpaid?

A. They are.

Q. 259. Turn to page 154 and 159 and state how much you owed E. N. Welch Manfg. Company, which also had houses in New York and Chicago?

A. $422.25 to both houses.

Q. 260. Was this for goods bought?

A. It was.

Q. 261. When were they bought?

A. September, October, November, December, 1879, and January, 1880.

Q. 262. Is this amount still due and unpaid?

A. It is.

Q. 263. Turn to page 75 and state how much Schwed & Newhouse owed T. Quayle & Co., February fifth, 1880?

A. $329.86.

Q. 264. Was that also for goods bought?

A. It was.

Q. 265. Is the debt still due and unpaid?

A. It is.

Q. 266. When did you buy the goods of Quayle & Co., for which you owed this bill?

A. August and December, 1879.

Q. 267. Turn to pages 4, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 26, 29, 32, 34, 37, 38, 39, 44, 45, 57, 59, 62, 63, 66, 70, 73, 76, 80, 81, 82, 83, 85, 87, 91, 92, 94, 96, 99, 103, 106, 109, 114, 137 and 141 of your ledger and give therefrom the respective amounts of all the balance of the indebtedness of Schwed & Newhouse February 5th, 1880, for goods purchased prior to that time, stating in each instance the name of the creditor, the amount of each indebtedness, when the goods were bought, and whether the indebtedness is still due or has since been paid or otherwise settled?

A. On page 4, B. A. Ballou & Co., $255.38, goods bought August, September, October, November, 1879, the amount is still due. On page 8, J. J. & J. M. Richards, $170.35, goods bought in July, August, 1879, debt still due. On page 9, W. & S. Blackington, $1050.57, goods bought November, 1879, debt still due. On page 11, we owe nothing on that account. On page 12, Bliss & Deane, $1214.83, goods bought August, October, November and December, 1879, debt still due. On page 13, Pierce, Willard & Co., $90.80, goods bought June, August, October, September, 1879, debt still due. On page 14, Charles Downs & Co., $380.89, goods bought August and November, 1879, and debt still due. On page 15, Bates & Bacon, $579.39, goods bought June, July, September, November and December, 1879, debt still due. On page 16, R. Blackington & Co., $241.60, goods bought August, September, November, 1879, debt still due. On page 18, Wilcox & Battell, $364.39, goods bought October and November, 1879, debt still due. On page 19 there is nothing due. On page 20, F. S. Draper & Co., $661.56, goods bought August, September, October, November, 1879, debt still due. On page 21, George H. Fuller, $76.28, goods bought October, November, December, 1879, debt still due. On page 22, Weightman & Hough, $468.17, goods bought August, October and November, 1879, debt still due. On page 23, Charles F. Irons, $107.25, goods bought September 13th, 1879, debt still due. On page 26, Davidson Bros., $805.50, goods bought May, July, September, October, November and December, 1879, debt still due. On page 29, Fanning & Potter, $430.50, goods bought May 9th, August and October,

1879, debt still due. On page 32, Frederick I. Marcy $368.15, goods bought May, August November and December, 1879, debt still due. On page 34, Mason, Draper & Co., $203.70, goods bought September, 1879, debt still due. On page 36, nothing due. On page 37, W. A. Beatty & Co., $266.62, goods bought October and November, 1879, debt still due. On page 38, Block Bros., $332.50, goods bought August and October, 1879, debt still due.

Adjourned to Saturday, February 12th, 1881, at 10 o'clock a. m.

NEW YORK, March 12, 1880.
10 o'clock, a. m.

Met pursuant to adjournment.

Present, counsel for respective parties.

Examination of Edward Schwed resumed.—Witness continues in answer to question 267.

On page 39, Albert I. Smith & Co., $225, goods bought July, 1879, debt still due. On page 44, H. F. Barrows & Co., $700.50, goods bought August, September, October, November, 1879, debt still due. On page 45, J. W. Richardson & Co., $116.90, goods bought October, November, 1879, debt still due. On page 57, Julian Gallet, $655.87, goods bought September, October, November, December, 1879, debt still due. On page 59, Lincoln, Tifft & Co., $356.10, goods bought August, October, November, 1879, debt still due. On page 62, Potter & Buffinton, $1,293.30 goods bought July, August, September, October, November, 1879, debt still due. On page 63, Silcox & Cooley, $83.16, goods bought November 1879, debt still due. On page 66, Arnold & Webster, $459.60, goods bought November, 1879, debt still due. On page 70, Planeville Stock Company, $213, goods bought August, 1879, debt still due. On page 73, M. Fitzgerald & Co., $859.99, goods bought August and November, 1879, debt still due. On page 76, A. Joralman & Co., $373.88, goods bought August and September, 1879, debt still due. On page 80, Robert Barton, $277.37, goods bought July, September, October, November, 1879, debt still due. On page 81, Fowler Bros. & Co., $378.38, goods bought November, 1879, debt still due. On page 82, E. J. Franklin & Co., $312.76, goods bought August, October, November, 1879, debt still due. On page 83, Vaughn & Merrill, $367.78, goods bought August, November, 1879, debt still due. On page 85, Hodges & Carpenter, $220.25, goods bought September, October, November, 1879, debt still due. On page 87, Hamilton & Hunt, $730.11, goods bought August, September, October, 1879, debt still due. On page 91, Ernest Thoma, $365.64, goods bought September and November, 1879, debt still due. On page 92, John T. Moran, $538.91, goods bought August, September, October, 1879, debt still due. On page 94, Godfrey, Gardner & Co., $248.75, goods bought August, 1879, debt still due. On page 96, Waite, Smith & Co., $538.58, goods bought August and November, 1879, debt still due. On page 99, O. C. Deveraux & Co., $234.01, goods bought August, October, 1879, debt still due. On page 103, E. A. Robinson, $282.50, goods bought August, October, 1879, debt still due. On page 106, W. E. White & Co., $416.45, goods bought August, September, October, 1879, debt still due. On page 109, Short, Nemey & Co., $301.25, goods bought August, September, October and December, 1879, debt still due. On page 114, T. I. Smith, $99.46, goods bought October, 1879, debt still due. On page 137, Sussfeld, Lorsch & Co., $748.13, goods bought August, September, October, November, 1879, and January, 1880,

debt still due. On page 149, B. S. Freeman & Co., $1,085.08, goods bought August, September, October, November, 1879, and January, 1880, debt still due.

Complainant's counsel here requests the examiner to make copies of the accounts of Ketcham & McDougall, and Green & Allen, on pages 11 and 19 of said ledger, and return the same with this deposition.

Which is done accordingly and marked Complainant's Exhibits "L," and "M," respectively.

Q. 268. State what the account with A. Limburger, on page 6 of the ledger returned into court as Exhibit "17," with your Pittsburgh deposition, is?

A. It is for money loaned by Limburger to Schwed & Newhouse.

Q. 269. Will you now turn to the book of bills receivable and state the amount of notes that have been executed to Schwed & Newhouse, growing out of the Kansas City business, that have been collected since February fifth, 1880?

A. $317.29.

Q. 270. Will you please state whether notes numbered on your book of bills receivable, 1019, 1022, 1026, 1027, 1030, 1033, 1034, 1035 and 1036 were discounted by you after they were made and prior to February fifth, 1880?

A. Note No. 1030, of the above, was discounted and all the balance were paid to Schwed & Newhouse; 1019 I think was compromised by the payment of $30, the amount of the note being $75.55; 1022 was paid after February 5th, 1880; 1026, 1027, 1033, 1034, 1035 and 1036, were all paid after February 5th, 1880.

Q. 271. What is the aggregate amount of these notes numbered 1019, 1022, 1026, 1027, 1033, 1034, 1035 and 1036 which you say have been paid since February 5th, 1880?

A. $795.55.

Q. 272. Please state what this book is?

A. Invoice file of Schwed & Newhouse, also of Mrs. Schwed.

Q. 273. Is it one of the books you have produced here before the examiner in obedience of the order of court?

A. It is.

Q. 274. What period of time is covered by the files contained in the book?

A. It commences April 1879, to January 1881.

Q. 275. The book is a file of original bills of goods purchased, is it not?

A. It is.

Q. 276. That part of the book containing bills rendered prior to February 5th, 1880, was kept by Schwed & Newhouse, was it not?

A. It was.

Q. 277. And that part of the book kept since February 5th, 1880, was also kept by Schwed & Newhouse, in the capacity, as you claim, of agents of Mrs. Schwed, was it not?

A. It was; but where Mrs. Schwed's business commences I pasted a leaf in to that effect, with her name on it.

Q. 278. Turn to said invoice and give us the amounts of bills purchased since February 5th, 1880, giving in each instance the amount and date of each purchase and the names of the persons to whom the bills were rendered and whether the same have been paid or not?

A. I offer to testify that the bills rendered to Mrs. Schwed, or Schwed & Newhouse as her agents, and posted in the book in question are correct to the best of my knowledge and belief, and that they truly represent goods purchased by Mrs. Schwed in her business. That said bills, when paid, are so marked "Paid." I decline to enter into computation of the gross amount of said bills, or to recite from said bills the items of particulars therein given, by advice of my counsel.

Q. 279. You have given this answer from a slip of paper in your hand, have you not?

A. I have.

Q. 280. Who framed said answer for you?

A. My attorney, Mr. Creevey.

Q. 281. Will you permit said invoice-book to be returned into court as an exhibit with this deposition?

A. I will.

Said book is offered in evidence and filed herewith as an exhibit, and marked Complainant's Exhibit N, March 12th, 1881.

J. M. DEVEL, Special Examiner.

Witness states that he desires to qualify his last answer as follows: I wish to qualify my answer to the last question, by saying that I have no authority to permit the book in question, so far it relates to Mrs. Schwed's business to be returned into court, but that I mean by my answer that I interpose no objection on my own behalf to any use to which said book may be put by the court.

Q. 282. Is this statement also from a written slip furnished you by your counsel?

A. It is.

Q. 283. Is the account of stock that was taken by Schwed & Newhouse in the capacity, as you claim, of agents, in January, 1881, of the stock on hand at Pittsburgh, contained in any book that is produced here before the examiner?

A. It is not.

Q. 284. In what book was it taken when made?

A. In the book where we take our stock.

Q 285. Where is that book?

A. In our place of business.

Q 286. Why did you not produce it with the other books?

A. Because it wasn't called for to my knowledge.

The order being re-read to the witness by complainants' counsel, he is notified to produce said book at the next sitting—after the first adjournment.

Q. 287. State whether, on the 5th day of February, 1880, Schwed & Newhouse owned any other property than the stocks of goods at Kansas City and Pittsburgh, on which the executions of Mr. Keller had been levied, and the accounts and bills due and outstanding at that time?

A. No, sir.

Q. 288. Does page 170 of Pittsburgh ledger show the amount of money that Mr. Newhouse has received since February 5th, 1880, on his own account out of the Pittsburgh business?

A. It does.

Complainant's counsel requests the examiner to make a copy of the account of S. H. Newhouse, on page 170 of said ledger, and return the

same to this court with this deposition, which is accordingly done and marked complainant's Exhibit "O."

Q. 289. Does page 166 of Pittsburgh ledger show the amount of money that you received in like manner, out of the Pittsburgh business, since February 5th, 1880, on your own account?

A. It does not. It shows the amount of money Mrs. Schwed drew out.

Q. 290. Was it drawn out personally or through you?

A. It was drawn out through me as her agent.

Q. 291. That is, when the entries were made you took the money out of the business, as you claim for her, and as her agent, did you?

A. I did.

Q. 292. Is that account a correct statement of all the moneys taken by you out of the Pittsburgh business since February 5th, 1880?

Objected to as assuming that the witness has testified that any money was taken by him out of the business.

A. It is all of the moneys taken out by me for Mrs. Schwed.

Q. 293. Were any other moneys taken out of the Pittsburgh business by you, for her or yourself, since February 5th, 1880?

A. No, sir.

Complainants' counsel requests the examiner to make a copy of the account of Mrs. E. Schwed, on page 165, of said ledger, and return the same to this court with this deposition, which is accordingly done and marked complainants' exhibit "P."

Q. 294. What is the account on page 160, 161 and 162 of this ledger?

A. The account of the Kansas City house with the Pittsburgh house.

Q. 295. Does that account show the amount of merchandise that went to the Kansas City house?

A. It does.

Q. 296. Is the Kansas City house charged or credited in the account with the merchandise which it received from the Pittsburgh house?

A. It is charged and credited with the merchandise received directly from the houses the goods were bought from.

Q. 297. That is, the Kansas City house was charged, not only with the goods received by it direct from the Pittsburgh house, but also for goods shipped direct to the Kansas City house from the parties from whom you purchased them; ain't that what you mean?

A. It is.

Q. 298. Where were payments made for those of the goods that went to Kansas City that were paid for? At Pittsburgh or at Kansas City?

A. At Pittsburgh.

Q. 299. To which house was bills of purchases of goods that were sent to Kansas City rendered?

A. The originals were sent to Kansas City and duplicates, in most cases, to Pittsburgh.

Q. 300. What was the total amount of the goods sent to the Kansas City house?

A. $22,415.19 is the amount.

Q. 301. Was that the amount of the goods at the cost price to Schwed & Newhouse or not?

A. It was.

Q. 302. Will you please explain the erasures which appear to have

been made where the names of H. Muhr's Son appears on the day-book, February 11th and 12th, 1880?

A. I cannot explain them any more.

Q. 303. The alterations are apparent, are they not; please look at the page and answer?

A. There are some erasures, but to the best of my knowledge there was no alteration made.

Q. 304. Was not something written in each entry after the capital letter "H," and where the word "Muhr" in each entry is now found, before said word "Muhr" was there written?

A. I cannot remember any more.

Q. 305. Can't you tell that by looking at the entries?

A. I cannot.

Q. 306. Is it not plain that there have been erasures where the word "Muhr" appears in each account?

A. It is.

Q. 307. Were these two entries carried into any ledger?

A. It seems not.

Q. 308. Where do Muhr & Sons reside?

A. Philadelphia.

Adjourned to Monday, March 14th, 1881, at 10½ o'clock, A. M.

NEW YORK, March 14th, 1881.
10½ o'clock, A. M.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Examination of Edward Schwed resumed.

Complainants' counsel here requests the examiner to make a statement and copy of the bills of goods pointed out by the witness as contained in the book of invoices produced by him, and as having been purchased since February 5th, 1880, on behalf, as it is alleged, of Mrs. Schwed; said statement to contain, in appropriate columns, the dates of the said bills, the names of the persons against whom said bills were rendered, the bills that are marked paid and the bills not marked paid, with footings under the columns of bills marked paid and the columns not marked paid, which is accordingly done by the examiner, and said statement and copy being made is filed herewith, marked complainants' exhibit "Q," March 14th, 1881.

J. M. D.
Sp'l. Ex'r.

Q. 309. Are there any bills contained in this statement and account made by the examiner, that are not paid?

A. I do not think so.

Q. 310. Are the bills which were purchased in February and March, 1880, and which are contained in the column not marked paid of the examiner's statement above mentioned, paid; or do they remain still due?

A. To the best of my knowledge they are not paid.

Q. 311. Please state how these bills were purchased, whether for cash or on credit?

A. They were for cash, because we had no credit.

Q. 312. What has become of all the money that has been collected on accounts and bills receivable, growing out of the old business at Pittsburgh and Kansas City, which have been collected since February 5th, 1880?

A. I think I fully answered this question in my deposition taken in Pittsburgh.

Q. 313. Have you not used some of this money in the purchase of these bills made since February 5th, 1880?

A. I think I answered this question too, in Pittsburgh.

Q. 314. Have you produced the book containing the account of stock taken at Pittsburgh, January, 1881?

A. I have.

Q. 315. What is the amount of that account of stock?

A. $6,317.78.

Q. 316. Have you any book or data from which you can state the total amount of cash collected from all sources by Schwed & Newhouse, either on their own behalf, or in their alleged capacity as agents, since February 5th, 1880; except the cash-book, which you say is missing?

A. They can be found, I think, in the day-book or ledger.

Q. 317. Did you not state at Pittsburgh that cash sales were not put in the day-book, or ledger?

A. I did.

Q. 318. Could the amount of such sales be ascertained from any other source than the cash-book that is missing?

A. No, sir.

Q. 319. Is there any business belonging to what you claim to be the new concern of Mrs. Schwed recorded in the ledger of accounts that were kept at Kansas City and which has been produced before the examiner?

A. Not to my knowledge.

Q. 320. Please examine the book and state definitely?

A. No, sir.

Q. 321. Is there any objection, and are you willing that this book should be returned into court as an exhibit with this deposition?

A. I have no objection, but I should prefer that the book remain here.

Q. 322. Is there any cash entered in the missing cash-book since February 5th, 1880, except the cash from cash sales, that is not also entered in the Pittsburgh ledger, now before us?

A. I don't think there is.

Cross-examination reserved.

Further direct examination of the witness Edward Schwed renewed by complainants' counsel.

Q. 323 Please state the amount of sales made at the Pittsburgh stand in 1878, 1879 and 1880?

Witness here refers to his two day-books, and answers as follows:

A. Schwed & Newhouse sold in 1878, $20,059.16. In 1879, $20,486.76. In January, 1880, $830.06, and on account of Mrs. Schwed, from February to December 31st, 1880, $17,448.49. In connection with this I wish to state that these accounts were made up for the purpose of paying our merchandise tax on gross sales.

Q. 324. Are the bills of purchases made since February 5th, 1880, which have been designated by you and are contained in the book of invoices, and a copy of which has been made by the examiner, marked exhibit "Q," the bills of all the purchases that were made by Schwed & Newhouse in the capacity, as claimed by you, as agents, from February 5th, 1880, to December 31st, 1880?

A. To the best of my knowledge they are.

Complainants' counsel here requests the examiner to make and file herewith a copy of the account designated by the witness as the account of sales for the year 1880, which is done accordingly and which account being made and filed herewith and marked complainants' exhibit "R."

Cross-examination of Edward Schwed by Mr. Sulzberger, counsel for defendant Heller.

Q. 325. I understand you to have testified that the only account appearing upon your ledger showing loans of money to the firm is the account of Mr. A. Limburger for $10,000; is that so?

A. That is so.

Q. 326. During all the time that you were in business have you not borrowed money many times and from various persons?

A. We have.

Q. 327. Give us the names of some of the persons?

A. Mr. Heller, of Philadelphia, Mr. Josiah Cohen, of Pittsburgh, J. D. Berne & Co., and perhaps a few more. I don't recollect any more.

Q. 328. Did you ever borrow from any banks?

A. We borrowed from the bank of Commerce in Pittsburgh, that is they discounted customers' notes with our endorsement, not our own notes.

Q. 329. You placed none of these acccounts in the ledger, do you say?

A. I did not.

Q. 330. Why then did you place Mr. Limburger's account in the ledger?

A. Because it was a permanent loan to be returned as soon as we were able to, while the other loans I considered them only temporary.

Q. 331. Where does Mr. Limburger live?

A. In the city of New York.

Q. 332. Is he any relation to you?

A. No, sir; but he was my employer for ten years.

Q. 333. Is he any relation to your wife?

A. He is not.

Q. 334. Is he any relation to Mr. Newhouse?

A. He is not.

Q. 335. Has he been paid any part of those $10.000.

A. No, sir.

EDWARD SCHWED.

Sworn before me,
J. M. DEVEL,
Special Examiner.

It is agreed by the counsel for the respective parties that the book of invoice files herewith as exhibit "N," may be and the same is hereby withdrawn as an exhibit, and in lieu of said exihbit it is agreed that the statement of the examiner, marked exhibit "Q," may, subject to all objections, on the grounds of irrelevancy, incompetency and illegality, be used on the trial of this case in place of said invoice-book and the bills therein contained.

EXHIBIT "A."

Dr. D. L. CLEELAND. *Cr.*

Harrisville, Pa.

1879.									
Jan'y	1	To balance,	421	$212.19	Jan'y	4	By cash,	240	$50.00
March	19	" mdse.	281	44.88	Feb'y	8	" do	252	25.00
	22	" "	284	48.90		10	" old silver,	252	4.05
April	19	" "	308	42.00	March	20	" cash,	280	25.00
Nov.	18	" "	515	80.60		19	" do	282	5.00
Dec.	30	" sale,	2	.66		22	" old silver,	283	4.25
					April	21	" cash,	310	40.00
					May	27	" do	334	25.00
					June	24	" do	356	25.00
					Aug.	2	" do	382	40.00
					Sept.	20	" do	439	25.00
					Oct.	1	" do	447	25.00
						24	" do	472	29.67
					Dec.	9	" do	546	25.00
						31	" balance,		81.26
				$429.23					$429.25
1880.					1880.				
Jan'y	1	To balance,		$ 81.26	March	5	By cash,	43	$35.00
March	10	" mdse.	48	3.50		20	" do	54	49.76
April	10	" do	72	.15	June	25	" do	131	30.00
	21	" do	83	112.88	July	10	" do	140	30.00
June	2	" do	123	2.50	Aug.	25	" do	167	52.88
Aug.	31	" do	169	31.75		31	" do	169	72.65
Sept.	15	" do	179	1.25	Nov.	23	" do	252	33.00
Oct.	27	" do	225	125.50					
1881.									
Jan'y	28	" do	323	21.60					

SMITH *v.* SCHWED.

Compl'ts' Exhibit "A."
J. M. D.
Sp'l Ex.

EXHIBIT "B."

Dr. S. SCHERZINGER. *Cr.*

Allegheny.

1879.									
Jan'y	1	To balance,	480	$119.39	Feb'y	4	By cash,	250	$60.00
Feb'y	4	" mdse.	250	39.07	April	21	" do	309	59.37
	14	" do	256	6.95	July	15	" do	370	50.00
	17	" do	257	3.60	Sept.	15	" do	433	71.74
March	26	" do	287	26.12	Dec.	2	" do	534	70.00
	29	" do	291	8.00	1880.				
April	21	" do	309	21.13	Jan'y	16	" do	16	50.00
June	28	" do	360	16.87	April	23	" do	85	56.78
July	15	" do	370	3.13	Nov.	30	" do	263	51.27
	25	" do	376	2.00					
Sept.	15	" do	434	104.29					
Dec.	2	" do	534	60.11					
1880.									
Jan'y	16	" do	16	7.25					
April	15	" do	76	29.67					
May	8	" do	103	16.47					
Sept.	17	" do	182	5.13					
Nov.	30	" do	263	69.46					

SMITH *v.* SCHWED.

Compl'ts' Ex. "B."
J. M. D.
Sp'l Ex'r.

EXHIBIT "C."

Dr. MRS. L. MILLER. (Parkers.) Dukes Centre, Pa. *Cr.*

1880.					1880.				
Jan'y	1	To balance,	22	$133.21	April	6	By cash,	69	$21.69
	7	" mdse.	9	2.00	May	14	" do	110	50.00
	20	" do	19	5.00	July	16	" do	142	50.00
Feb'y	20		33	32.17	Sept.	29	" do	192	50.00
	11		33	80.13	1881.				
					Jan'y	25	" do	322	81.42

SMITH *vs.* SCHWED.

Compl'ts' Exhibit "C."
J. M. D.
Sp'l Ex'r.

EXHIBIT "D."

Dr. (M.) HINKLEY & LOGAN. Mercer. *Cr.*

1879.									
Jan'y	1	To balance,	510	$62.10	May	8	By sundries,	323	$117.07
March	18	" mdse.	580	49.22	July	21	" note,	373	100.00
	22	" do	585	5.00	Nov.	12	" do		100.00
April	21	" do	309	.75	Dec.	31	" balance,		91.44
May	8	" do	322	37.50					
	9	" do	322	23.55					
	27	" do	334	9.33					
June	6	" do	345	6.90					
	17	" do	352	.50					
	23	" do	362	87.08					
July	3	" do	365	19.00					
Sept.	1	" do	414	11.50					
	19	" do	438	5.83					
Nov.	5	" do	492	4.50					
	17	" do	512	85.75					
				$408.51					$408.51
1880.									
Jan'y	1	To balance,		$91.44	April	20	By cash,	82	$10.00
Feb'y	21	" mdse.	29	2.75	June	14	" do	127	20.00
April	20	" do	82	22.83	Aug.	19	" note	162	126.67
	21	" do	82	10.58	Nov.	26	" sundries,	259	126.67
June	14	" do	126	25.12					
	18	" do	127	3.95					
Oct.	27	" do	224	11.13					
Nov.	26	" do	257	99.28					
	26	" note,	259	126.67					
	29	" mdse.	259	6.50					
Dec.	7	" do	275	5.25					
	31	" note,	302	96.67					

SMITH *vs.* SCHWED.

Compl'ts' Exhibit "D."
J. M. D.
Sp'l Ex'r.

EXHIBIT "E."

Dr. CHAS. VOLKMAN. *Cr.*

470 West Balto St., Baltimore.

1879.									
Jan'y	1	To balance,	288	$14.63	May	8	By cash.	322	$ 14.63
June	14	" mdse.	350	13.00	Feb'y	21	" do	29	53.08
Sept.	9	" do	429	40.08	Oct.	23	" sundries,	220	77.90
Dec.	17	" do	563	21.00					
1880.									
March	30	" do	63	56.90					

SMITH
v.
SCHWED.

Compl'ts' Exhibit "E."
J. M. D.
Sp'l Ex'r.

EXHIBIT "F."

Dr. W. D. GLENN. *Cr.*

Washington, D. C.

1879.									
Jan'y	1	To balance,	225	$ 99.62	Feb'y	25	By cash	264	$ 12.00
					April	4	" do	297	10.00
					June	11	" do	348	15.00
					Sept.	11	" do	433	5.00
					Oct.	10	" do	456	10.00
					Nov.	11	" do	505	8.00
					Dec.	15	" do	557	7.00
					1880.				
					Feb'y	4	" do	22	8.00
					April	1	" do	65	10.00
					June	12	" do	127	5.00
					1881.				
					Jan'y	19	" do	317	9.72

SMITH
v.
SCHWED.

Compl'ts' Exhibit "F."
J. M. D.
Sp'l Ex'r.

EXHIBIT "G."

Dr. ED. WOOD. *Cr*

Bay City, Mich.

1879.									
March	17	To mdse.	295	$ 16.32	May	8	By cash,		$ 15.00
May	8	" do	324	53.09	July	18	" sundries,		87.69
June	4	" do	359	56.37	Sept.	13	" cash,		53.07
Aug.	21	" do	431	90.66	1880.				
Oct.	10	" do	459	53.87	Jan'y	7	" do		90.66
Nov.	13	" do	532	14.75	May	3	" do		50.00
Dec.	1	" do	532	101.22	June	24	" do		50.00

EXHIBIT "G."—*Continued.*

1880.						1880.			
March	1	To mdse.	59	$ 40 40		Aug.	30	By cash,	$ 50 00
	2	" do	41	5 37		Sept.	27	" do	15 00
May	3	" do	99	13 50		Nov.	18	" note,	240 00
	12	" do	123	16 25					
June	24	" do	631	117 83					
July	6	" do	158	22 00					
Sept.	24	" do	195	129 77					
Nov.	18	" do	250	84 10					
	18	" interest,	250	3 00				P'd. 76	
				$856 58					$305 00

SMITH
v.
SCHWED.

Compl'ts' Exhibit "G."
J. M. D.
Sp'l Ex'r.

EXHIBIT "H."

Dr. C. R. COMMINGS. *Cr.*

Harrisburg.

1879.									
June	18	To Mdse.	354	$ 29 25		Sept.	12	By sundries,	433 $ 29 25
Sept.	12	" do	432	56 00		Nov.	6	" cash	495 10 00
Nov.	6	" do	494	79 17		Dec.	18	" do	566 20 00
Dec.	18	" do	565	173 03		1880.			
	23	" do	571	3 00		Jan'y	3	" do	5 26 00
1880.						March	29	" do	62 30 00
March	29	" do	62	13 75		June	1	" do	123 10 00
						July	6	" do	138 65 00

SMITH
v.
SCHWED.

Compl'ts' Exhibit "H."
J. M. D.
Sp'l Ex'r.

EXHIBIT "J."

Dr. LEO BRAUN. *Cr.*

Springfield.

1879.						1880.			
Oct.	20	To mdse.	473	$ 67 40		March	8	By cash,	46 $ 45 00
1880.						July	23	" do	143 35 00
March	8	" do	45	94 83		Sept.	10	" do	174 120 00
April	26	" do	90	37 47					
Sept.	10	" interest,	174	30					
Dec.	9	" mdse.	278	79 50					

SMITH
v.
SCHWED.

Compl'ts' Exhibit "J."
J. M. D.
Sp'l Ex'r.

EXHIBIT "K."

Bills and Notes Receivable.

No.	Date.	Drawer.	To Whom Payable.	Time.	When Due.	Amount.	Remarks.
977	July 3, 1879	James Miller	S. & N.	4 months	Nov. 6	$ 83 05	Paid.
978	2	L. C. Bullard	do	3 months	Oct. 5	100 00	do
979	9	C. Scharbach	do	4 months	Nov. 12	150 00	do
980	1	C. F. Kesselmier	do	4 months	Nov. 4	150 00	Paid, less $50.
981	12	C. F. Kesselmier	do	4 months	Nov. 15	150 00	do do do
982	June 20	Geo. E. Boehme	do	4 months	Oct. 23	100 00	Paid.
983	July 12	Geo. E. Boehme	do	4 months	Nov. 15	100 00	do
984	11	C. Scharbach	do	5 months	Dec. 14	100 00	do
985	7	M. Hinkley	do	3 months	Oct. 10	100 00	do
986	2	Wenkle & Epenchild	do	4 months	Nov. 5	100 00	do
987	Aug. 12	Geo. E. Boehme	do	4 months	Dec. 15	200 00	do
988	12	Studey & Fradey	do	4 months	Dec. 15	100 00	do
989	1	C. F. Kesselmier	do	4 months	Dec. 4	200 00	do
990	12	C. F. Kesselmier	do	4 months	Dec. 15	200 00	do
991	13	C. Scharbach	do	5 months	Jan. 17	100 00	do
992	Sept 3	Wenkle & Epenchild	do	4 months	Jan. 6	100 00	do
993	9	W. Kummel	do	4 months	Jan. 12	66 64	do
994	1	C. F. Kesselmier	do	4 months	Jan. 4	200 00	do
995	12	C. F. Kesselmier	do	4 months	Jan. 15	200 00	do
996	9	Reuben Lyon	do	4 months	Jan. 12	150 00	do
997	9	Reuben Lyon	do	5 months	Feb. 12	100 00	$50 and $50 renewed.
998	9	Reuben Lyon	do	6 months	Mar. 12	83 25	Returned.
999	12	W. J. Saver	do	3 months	Dec. 15	100 00	Paid.
1000	13	Louis Braun	do	60 days	Nov. 5	34 77	do
1001	15	Emil Young	do	30 days	Oct. 18	99 83	1880, May 28th, returned.
1002	15	Emil Young	do	60 days	Nov. 17	99 00	do
1003	22	Theo. Brarmeck	do	30 days	Oct. 25	60 00	Returned and paid.
1004	30	L. Miller	do	30 days	Nov. 2	100 00	Paid.
1005	30	L. Miller	do	60 days	Dec. 2	100 00	do
1006	30	L. Miller	do	90 days	Jan. 1	100 00	do
1007	30	L. Miller	do	4 months	Feb. 2	133 82	do
1008	Oct. 2	B. Ashley	do	60 days	Dec. 4	64 76	do
1009	2	B. Ashley	do	90 days	Jan. 3	100 00	do
1010	2	L. C. Bullard	do	3 months	Jan. 5	100 00	do
1011	13	C. F. Kesselmier	do	4 months	Feb. 16	200 00	April 28th, returned protested.
1012	11	C. Scharbach	do	4 months	Feb. 14	100 00	Paid.
1013	14	Geo. E. Boehme	do	4 months	Feb. 17	200 00	do
1014	11	J. K. Paine, Topeka, K	do	6 months	April 14	99 30	Returned to Kansas City.

EXHIBIT "K."—*Continued.*

BILLS AND NOTES RECEIVABLE.

No.	DATE.	DRAWER.	TO WHOM PAYABLE.	TIME.	WHEN DUE.	AMOUNT.	REMARKS.
1015	Nov. 4, 1879	J. L. Paine, Topeka, K	S. & N	6 months	April 7	$ 125.51	Returned to Kansas City.
1016	7	L. C. Bullard	do	4 months	Feb. 10	100.00	Paid.
1017	8	Reuben Lyon	do	4 months	Feb. 11	100.00	Returned.
1018	8	Reuben Lyon	do	5 months	Mar. 11	100.00	Paid part.
1019	8	Reuben Lyon	do	6 months	April 11	75.55	do
1020	5	M. Hinkley	do	3 months	Jan. 8	100.00	Paid.
1021	11	C. F. Kesselmier	do	4 months	Feb. 14	200.00	do
1022	10	Thos. J. Brown & Son	do	4 months	Feb. 13	90.50	do
1023	15	W. J. Sarver	do	3 months	Jan. 18	100.00	do
1024	13	W. Wilson	do	3 months	Jan. 16	116.40	do
1025	13	Studer & Fradey	do	4 months	Feb. 16	100.00	do
1026	21	Wenkler & E	do	4 months	Feb. 24	50.00	do
1027	8	Spies & Hate	do	6 months	May 11	79.50	do
1028	12	C. F. Kesselmier	do	4 months	Mar. 15	200.00	do
1029	17	Geo. E. Boehme	do	3 months	Feb. 20	100.00	do
1030	17	Geo. E. Boehme	do	4 months	Mar. 20	100.00	do
1031	18	W. J. Sarver	do	4 months	Mar. 21	100.00	$50 paid.
1032	Jan. 20, 1880	W. J. Sarver	do	4 months	April 23	100.00	$25. Returned.
1033	15	Studer & Fradey	do	4 months	April 18	100.00	Paid.
1034	14	C .F. Kesselmier	do	4 months	May 17	200.00	do
1035	20	C. Scharbach	do	4 months	May 23	100.00	do
1036	22	Jacob Ult	do	60 days	Mar. 25	100.00	do
1037	Feb. 9	Reuben Lyon, Kansas City	do	3 months	May 12	50 00	renewed.
1038	12	C. F. Kesselmier	do	4 months	June 15	200.00	Paid.
1039	18	C. Scharbach	do	4 months	June 21	100.00	do
1040	18	Studer & Fradey	do	5 months	July 21	126.59	do
1041	18	Mrs. E. J: Bachme	do	1 year	Feb. 21, 1881	416.78	
1042	25	W. J. Sarver	do	4 months	June 28	100.00	Paid $25, balance renewed.
1043	25	W. J. Sarver	do	5 months	July 28	100.00	Paid $50.
1044	25	W. J. Sarver	do	6 months	Aug. 28	111.39	
1045	Jan. 24	Chas. G. Weber	do	6 months	Aug. 27	136.68	Paid.
1046	24	Chas. G. Weber	do	6 months	Aug. 27	226.42	Paid $100, balance renewed.
1047	Feb. 20	W. Wilson	do	5 months	July 23	128.15	Paid.
1048	12	C. F. Kesselmier	do	5 months	July 15	200.00	Paid $100.
1049	12	C. F. Kesselmier	do	6 months	Aug. 15	200.00	
1050	12	C. F. Kesselmier	do	7 months	Sept. 15	200.00	
1051	12	C. F. Kesselmier	do	8 months	Oct. 15	200.00	
1052	12	C. F. Kesselmier	do	9 months	Nov. 15	186.06	

EXHIBIT "K."—*Continued.*

Bills and Notes Receivable.

No.	Date.	Drawer.	To Whom Payable.	Time.	When Due.	Amount.	Remarks.
1053	Feb. 4, 1880	O. H. Baker, Topeka,	S. & N	30 days	Feb. 8	$ 75.00	
1054	4	O. H. Baker, Topeka,	do	45 days	Mar. 23	77.46	Paid.
1055	4	S. R. Bear	do	45 days	April 4	232.48	do
1056	Jan. 4	G. M. Todd & Co., Kan. City,	do	3 months	April 7	64.83	
1057	Feb. 20	C. Scharbach	do	6 months	Aug. 23	100.00	Paid.
1058	23	C. Scharbach	do	8 months	Oct. 26	100.00	
1059	23	C. Scharbach	do	10 months	Dec. 26	145.03	
1060	Mar. 11	Reuben Lyon	do	90 days	June 12	67.25	With interest. Paid.
1061	12	Reuben Lyon	do	4 months	July 15	66.00	Returned.
1062	27	Sam'l Smith	do	60 days	May 29	61.49	Paid.
1063	April 5	Wm. M. Nicholson	do	12 months	April 8	400.00	
1064	5	Wm. M. Nicholson	do	18 months	Oct. 8	425.00	
1065	9	Wm. G. Spies	do	6 months	Oct. 12	45.93	Paid
1066	10	Reuben Lyon	do	90 days	July 12	50.00	
1067	Mar. 15	Rich Miller	do	90 days	June 10	100.00	
1068	15	Rich Mlller	do	7 months	Oct 18	150.00	
1069	15	Rich Miller	do	9 months	Dec. 18	116.24	
1070	April 26	O. H. Remington	do	1 month	May 29	64.80	
1071	26	O. H. Remington	do	2 months	June 29	64.80	Paid.
1072	25	Moses Smith	do	30 days	May 31	89.06	
1073	25	Moses Smith.	do	60 days	June 30	89.06	Returned.
1074	22	W. J. Sarver	do agts.	5 months	Sept. 25	100.00	do
1075	22	W. J. Sarver	do	6 months	Oct. 25	100.00	$50 cash.
1076	May 10	Reuben Lyon	do	60 days	July 12	35.00	Paid.
1077	29	Emil Young	do	60 days	Jnly 31	39.00	Returned.
1078	29	Emil Young	do	90 days	Aug. 30	25.00	Paid.
1079	29	Emil Young	do	4 months	Oct. 2	25.00	do
1080	29	Emil Young	do	5 months	Nov. 1	25.00	do
1081	29	Emil Yonng	do	6 months	Dec. 2	25.00	do
1082	29	W. J. Sarver	do agts.	4 months	Oct. 2	123.25	($50) renewed.
1083	June 1	Sam'l Smith	do	60 days	Aug. 3	43.00	Paid.
1084	1	Sam'l Smith	do	90 days	Sept. 2	44.25	do
1085	15	W. J. Sarver.	do	4 months	Oct. 18	82.00	do
1086	28	W. Kummer.	do	4 months	Oct. 31	77.00	Paid.
1087	July 8	Reuben Gray	do	90 days	Oct. 9	72.25	Rreturned.
1088	8	Reuben Gray	do	4 months	Nov. 11	72.25	Returned.
1089	8	Reuben Gray	do	5 months		71.66	Paid.
1090	May 28	Moses Smith	do	3 months	Dec. 11	89.06	do

EXHIBIT "L."

Dr. KETCHAM & McDOUGALL. (BROS. & CO.) *Cr.*
N. Y.

1875.					1875.		
April 13	To cash,	281	$53.28	Jan'y 1	By balance,	35	$4.33
July 14	" do	345	40.50	Feb'y 3	" mdse.	224	48.95
Dec. 2	" do	482	13.72	April 2	" do	265	40.50
1876.				Sept. 11	" do	391	13.72
Feb'y 26	" do	542	29.55	Dec. 3	" do	484	29.55
June 6	" do	50	23.70	1876.			
Dec. 18	" do	204	36.55	Feb'y 26	" do	543	23.70
1877.				Sept. 5	" do	116	36.55
May 24	" do	344	35.54	Dec. 20	" do	208	8.75
1878.				1877.			
March 4	" do	568	27.72	March 15	" do	273	25.29
Aug. 10	" do	63	29.77	May 7	" do	329	1.50
1870.				Nov. 17	" do	485	25.72
Feb'y 11	" do	252	46.26	Dec 11	" do	511	2.00
Dec. 29	" do	576	45.29	1878.			
1880.				March 7	" do	572	5.26
March 1	" do	38	14.95	15	" do	576	24.51
				Sept. 18	" do	94	34.51
				Nov. 25	" do	172	8.20
				Dec. 21	" do	230	3.55
				1879.			
				Oct. 20	" do	470	15.97
				Nov. 3	" do	498	29.32
				1880.			
				Feb'y 28	" do	37	14.95

SMITH
v.
SCHWED.

Compl'ts' Ex. "L."
J. M. D.
Sp'l Ex'r.

EXHIBIT "M."

Dr. GREENE & ALLEN. *Cr.*
Providence.

1875.					1875.		
Jan. 26	To cash,	218	$46.35	Jan. 1	By balance,	53	$46.35
1877.				1876.			
Jan. 26	" sundries,	229	26.32	Sept. 14	" mdse.	122	26.32
Nov. 30	" cash	494	15.53	1879.			
1880.				March 19	" do	279	15.53
Nov. 30	" sundries,	265	36.16	1880.			
				Oct 29	" do	229	36.16

SMITH
v.
SCHWED.

Compl'ts' Exhibit "M."
J. M. D.
Sp'l Ex'r.

EXHIBIT "O."

Dr. S. H. NEWHOUSE. *Cr.*

1880.					
March	12	To cash,	50	$50.00	
	30	" do	62	52.50	
	31	" do	62	35.00	
April	30	" do	95	41.00	
May	31	" do	122	119.50	
June	30	" do	135	77.50	
	30	" do	136	49.00	
July	31	" do	140	63.00	
Aug.	12	" do	156	35.50	
	20	" do	163	24.50	
	30	" mdse,	168	12.00	
	31	" cash,	169	115.50	
Sept.	30	" do	197	52.50	
	30	" do	197	41.00	
Oct.	30	" do	229	44.22	
Nov.	30	" do	261	104.50	
Dec.	29	" do	301	52.50	
	31	" do	302	59.00	
1881.					
Jan'y	31	" do	324	65.00	
Feb'y	12	" do	327	9.00	
				$1089.72	

SMITH
v.
SCHWED.

Compl'ts' Exhibit "O."

EXHIBIT "P."

Dr. MRS. E. SCHWED. *Cr.*

1880.					
Feb'y	28	To cash,	37	$105.00	
March	31	" do	62	120.00	
April	30	" do	95	252.29	
May	31	" do	122	207.54	
June	30	" do	136	117.33	
July	31	" do	148	215.33	
Aug.	7	" do	154	3.25	
	31	" do	169	97.83	
Sept.	10	" do	176	4.00	
	30	" do	197	141.33	
Oct.	19	" do	216	3.20	
	30	" mdse.	229	259.78	
Nov.	30	" cash,	265	167.54	
Dec.	14	" do	286	15.68	
	21	" mdse.	292	193.00	
	31	" cash,	302	187.33	
1881.					
Jan'y	31	" do	324	158.33	
Feb'y	12	" do	327	207.00	

SMITH
v.
SCHWED.

Compl'ts' Exhibit "P."

J. M. D.
Sp'l Ex.

EXHIBIT "Q."

Date of Bill.	To Whom Billed.	Marked paid.	Not ma'k'd paid.
1880.			
Feb. 20	Schwed & Newhouse, agents		$25.78
" 28	do do do		39.05
" 28	do do do		14.95
Mar. 3	Schwed & Newhouse,		12.69
" 8	Schwed & Newhouse, agents		14.79
" 13	Schwed & Newhouse,		66.45
" 13	Schwed & Newhouse, agents		56.41
" 18	do do do		6.40
" 17	do do		34.34
" 13	do do do		73.92
" 19	do do		3.40
" 19	do do		8.88
" 20	do do do		29.14
" 20	do do		30.76
" 20	do do do		30
" 22	do do	31.94	
" 27	do do do	40.75	
" 30	do do do		88.88
" 30	do do do	5.13	
" 30	do do		68.10
" 31	do do do		89.46
" 31	do do do		51.94
April 5	do do	36.10	
" 5	do do	48.41	
" 1	do do do	24.41	
" 2	do do	15.15	
" 6	do do	58.21	
" 7	do do	19.04	
" 5	do do do	19.58	
" 7	do do do	23.13	
" 8	do do do	29.61	
" 10	do do do		2.30
" 12	do do	57.90	
" 10	do do do	31.10	
" 12	do do do	46.57	
" 12	do do do	25.20	
" 12	do do do	40.85	
" 13	do do	46.22	
" 14	do do do	27.70	
" 22	do do do	29.33	
" 24	do do do	50.85	
" 15	do do do	132.83	
" 20	do do	21.00	
" 26	do do	13.00	
" 26	do do	25.84	
" 27	do do do	25.70	
May 1	do do do	25.37	
" 1	do do do	6.75	
" 1	do do	109.69	
" 3	do do	22.00	
" 3	do do		2.00
" 5	do do	14.08	
" 6	do do do	11.64	
" 6	do do	40.47	
" 11	do do		1.40
" 11	do do		3.08
" 12	do do do	31.20	
" 13	do do	1.79	
" 13	do do	36.00	
" 15	do do do	27.00	
" 19	do do		7.50
" 24	do do	31.28	
" 26	do do	101.65	
" 31	do do do	1.83	

EXHIBIT "Q."—*Continued.*

Date of Bill.	To Whom Billed.	Marked paid.	Not Ma'k'ed paid.
1880.			
June 12	Schwed & Newhouse,		$ 1.75
12	do do agents	$ 22.95	
23	do do do		
July 1	do do do	3.38	
2	do do do	2.00	
29	do do	2.40	
31	do do do	32.04	
Aug. 1	do do do	125.33	
" 6	do do do	103.28	
" 4	do do	120.32	
" 11	do do	210.23	
" 11	do do do	1.75	
" 11	do do do	122.67	
" 11	do do do	275.19	
" 13	do do do	13.16	
" 14	do do	46.40	
" 14	do do do	35.10	
" 16	do do	50.00	
" 16	do do do	1.25	
" 18	do do	39.75	
" 19	do do	38.48	
" 19	do do do	208.86	
" 19	do do do	90.95	
" 21	do de do	17.14	
" 21	do do	16.00	
" 23	do do do	16.50	
" 24	do do	49.82	
" 26	do do do	29.70	
" 26	do do	33.00	
" 26	do do do	15.90	
" 27	do do	1.50	
" 28	do do do	42.50	
" 30	do do do	81.00	
" 31	do do do	16.17	
Sept. 3	do do do	47.00	
" 1	do do do	19.98	
" 30	do do do	33.50	
" 29	do do	6.25	
" 25	do do	2.82	
" 25	do do do	13.16	
" 25	do do do	63.74	
" 25	do do do	42.75	
" 25	do do do	25.38	
" 25	do do	27.10	
" 22	do do	21.20	
" 22	do do do	61.90	
" 21	do do	18.75	
" 18	do do do	107.54	
" 16	do do do	93.15	
" 16	do do do	8.00	
" 16	do do	55.00	
" 15	do do do	104.90	
" 15	do do do	194.75	
" 13	do do do	21.93	
" 3	do do	.93	
" 13	do do	6.91	
" 10	do do	25.73	
" 6	do do do	54.65	
" 7	do do do	2.50	
Oct. 1	do do	15.60	
Sept 13	do do	.94	
" 24	do do do	240.14	
" 25	do do	2.57	

EXHIBIT "Q."—*Continued.*

Date of Bill.	To Whom Billed.			Marked paid.	Not ma'k'd paid.
1880.					
Sept. 30	Schwed & Newhouse,				$ 37.52
" 30	do	do	agents		29.70
" 30	do	do			54.72
Oct. 4	do	do			54.45
" 4	do	do	do		31.73
" 4	do	do	do		45.75
" 6	do	do	do		56.25
" 4	do	do	do		15.20
" 6	do	do	do		6.17
" 7	do	do	do		36.25
" 8	do	do	do		9.00
" 8	do	do	do		152.24
" 8	do	do	do		120.09
" 8	do	do	do		28.77
" 9	do	do	do		84.30
" 11	do	do	do		4.26
" 11	do	do	do		8.00
" 12	do	do	do		68.46
" 13	do	do	do		100.35
" 13	do	do	do		47.25
" 16	do	do			8.80
" 18	do	do			26.25
" 18	do	do	do		81.87
" 19	do	do	do		73.94
" 20	do	do	do		23.87
" 21	do	do	do		10.00
" 22	do	do	do		8.00
" 26	do	do	do		14.25
" 28	do	do	do		4.25
" 29	do	do	do		8.00
Nov. 10	do	do	do		37.00
" 12	do	do	do		26.79
Oct. 19	do	do			26.65
" 25	do	do	do		32.78
" 27	do	do	do		35.62
" 29	do	do	do		67.50
" 29	do	do			36.16
" 30	do	do	do		80.00
" 30	do	do	do		123.53
Nov. 6	do	do			151.75
" 6	do	do			30.68
" 8	do	do	do		14.00
" 8	do	do	do		10.50
	do	do	do		10.44
" 18	do	do			80.63
" 10	do	do			9.00
" 10	do	do	do		103.45
" 11	do	do			116.17
" 12	do	do			10.80
" 12	do	do	do		10.50
" 12	do	do	do		62.10
" 17	do	do	do		46.92
" 22	do	do			16.13
" 23	do	do			10.30
" 23	do	do	do		31.16
" 24	do	do			1.88
" 29	do	do	do		23.18
" 30	do	do	do		78.30
" 30	do	do			10.80
Dec. 27	do	do			3.00
" 28	do	do	do		611.95
" 24	do	do			18.68
" 23	do	do	do		41.36
" 17	do	do	do		60.22

EXHIBIT "Q."—*Concluded.*

Date of Bill.	To Whom Billed.			Marked paid.	Not ma'k'd paid.
1880.					
Dec. 17	Schwed & Newhouse,			$ 49.75	
" 16	do	do	agents	3.83	
" 15	do	do	do	19.71	
" 14	do	do		21.54	
" 13	do	do	do	29.00	
" 13	do	do	do	74.33	
" 11	do	do	do	21.60	
" 10	do	do		9.25	
" 7	do	do		46.50	
" 6	do	do		9.00	
" 6	do	do	do	61.47	
" 2	do	do		14.25	
1881.					
Jan. 12	do	do	do	9.00	
1880.					
Dec, 6	do	do	do	17.00	

EXHIBIT "R."

Sales of 1878.		Sales of 1879.		Sales of 1880.	
January	$ 824.33	January	$ 312.14	January	$ 830.06
February	1,440.43	February	1,093.14	February	849.87
March	1,425.75	March	1,644.81	March	1,568.35
April	1,084.58	April	1,238.15	April	1,852.19
May	1,010.64	May	1,392.59	May	1,695.49
June	671.85	June	1,540.58	June	742.31
July	272.19	July	896.14	July	696.58
August	1,007.05	August	1,817.13	August	983.54
September	1,840.36	September	1,701.97	September	1,722.67
October	3,167.17	October	2,431.58	October	1,777.34
November	2,310.66	November	2,556.42	November	2,561.82
December	5,003.55	December	3,861.93	December	2,998.33
	$20,059.16		$20,486.76		$18,278.55

SMITH
v.
SCHWED.

Compl'ts' Exhibit "R."
J. M. D.
Sp'l Ex'r.

Complainants' counsel requested the foregoing statement of account which appears to be the account of sales of goods for 1878 and 1879, referred to by witness Schwed, the same being a correct copy as taken from fly-leaf of the day-book produced before me. The request of counsel is complied with and the same is certified to be correct.

J. M. DEVEL,
Sp'l Examiner.

Circuit Court of the United States:

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS,
vs.
EDWARD SCHWED, SIMON H. NEWHOUSE, H. HELLER and O. P. W. BAILEY,
In Equity.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK, } ss.

I, J. M. Devel, Clerk of the Circuit Court of the United States for the Southern District of New York, a Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Missouri, do hereby certify that the foregoing are the proofs for final hearing taken before me in the above entitled cause on the part of the complainants under and pursuant to the 67th rule of the Supreme Court of the United States, as amended.

I do further certify, that I am not of counsel nor attorney for either of the parties, nor in any wise interested in the event of said cause.

I further certify that Mr. James S. Botsford appeared on the part of complainants, and Mr. Dan'l G. Thompson and Mr. Creevey appeared on the part of Schwed & Newhouse, and Mayer Sulzberger and J. Abarbanell, defendant Heller, in the taking of proofs.

J. M. DEVEL,
[SEAL]. Clerk of the Circuit Court of the United States,
for the Southern District of New York, as Special Examiner.

Simon H. Newhouse, produced as a witness on the part of complainants, being duly sworn deposes and says:

Q. 1. What is your name, age, residence and business?

A. Simon H. Newhouse; age thirty-six years; I reside at 357 East Fiftieth street, New York City; I am a jeweler.

Q. 2. Are you the Simon H. Newhouse of Schwed & Newhouse?

A. I am.

Q. 3. Who had charge of the business of Schwed & Newhouse at Kansas City, Missouri?

A. I did.

Q. 4. How many traveling salesmen did you have employed at Kansas City?

A. One.

Q. 5. What was his name?

A. George W. Scribner.

Q. 6. Was he your traveling salesman during the whole time you carried on business in Kansas City?

A. He was.

Q. 7. Were you present when the sheriff levied on the stock of goods in Kansas City, under Mr. Heller's execution?

A. I was.

Q. 8. About how long did you remain in Kansas City after stock was levied on?

A. A couple of weeks I think, I can't tell exactly just now?

Q. 9. What was done with the cash collected from time to time by you while carrying on the Kansas City business that remained on hand after paying the current expenses of the business there?

A. I remitted to Pittsburgh.

Q. 10. To whom in Pittsburgh?

A. To our firm in Pittsburgh.

Q. 11. Did those remittances continue from the time of commencing business down to about the time of the levy of the sheriff?

A. They did, from time to time.

Q. 12. Did those remittances embrace all the moneys not necessary to defray the expenses of the concern and your own personal expenses in Kansas City that were collected by you?

A. They did.

Q. 13. From which house were payments made for such of the goods, if any, that went to Kansas City, and for which payments were made?

A. They were made from the Pittsburgh house.

Q. 14. Please state what is the account on pages 12 and 13 of the Kansas City ledger?

A. It is the account of the Kansas City house with the Pittsburgh house.

Q. 15. Was this account kept by you?

A. Yes, sir; it is my hand-writing.

Q. 16. Were the entries therein contained made at the time the transactions occurred?

A. The transactions were entered in the day-book first and at the end of each month posted from the day-book into the ledger.

Q. 17. This account was kept then in the usual manner of keeping accounts?

A. Yes, sir; to the best of my knowledge; I don't profess to be a book-keeper.

Q. 18. Is this account kept by you between the two houses correct?

A. To the best of my knowledge, it is.

Q. 19. Please give the date and amount of the first goods received at Kansas City?

A. The first goods were entered on the ledger September 4th, 1879, and amounted to $14,284.49. These probably, were not all billed together. They were from different manufacturers in the east, to make up the amount of goods we started with in Kansas City; part of this amount was probably for some stock I took from Pittsburgh. These goods were received, to the best of my knowledge, the early part of September, 1879.

Q. 20. What is the date and amount of the last bill of goods received by the house at Kansas City, as shown by said account?

A. December 19th, 1879. The amount was $66.

Q. 21. Were the goods that were received from time to time by the Kansas city house shipped direct to Kansas City from the manufacturers, or were they first shipped to the Pittsburgh house, and then re-shipped to Kansas City?

A. Some were shipped direct from the manufacturers and some from the Pittsburgh house.

Q. 22. Did the goods for which Schwed & Newhouse are now indebted, that were purchased by them in 1879, go to the Kansas City house, or to the Pittsburgh house?

A. Some went to the Pittsburgh house, and some to the Kansas City house.

Q. 23. To which house did the larger portion of the goods so purchased go?

A. I don't remember.

Q. 24. For which house did you buy the most goods?

A. I don't recollect.

Q. 25. Have you, since January 26th, 1880, collected any moneys from accounts due Schwed & Newhouse, for merchandise due the Kansas City house?

A. I did.

Q. 26. Did you keep any ledger account, at Kansas City, with the creditors of Schwed & Newhouse from whom the goods that went to the Kansas City house were purchased?

A. I did not

Q. 27. Did you keep any account in this ledger, which you have here, of the bills sold at Kansas City to the customers of Schwed & Newhouse?

A I did.

Q. 28. Do those accounts of your customers, which are contained in this ledger, show the amounts which they have paid on those accounts to your firm?

A. They do, to the best of my knowledge.

Q. 29. Do they show payments that have been made both before and since January 26th, 1880?

A. To the best of my knowledge, they do.

Q. 30. Where was this ledger and the other Kansas City books of your firm when the sheriff levied his execution?

A. The books as far as I remember were in the safe at the time the levy was made.

Q. 31. When did you take them out of the safe the last time?

Counsel for defendants Schwed & Newhouse here whispers to the witness, which complainants' counsel protests is not legal or proper, and complainants' counsel insists that the witness answer the question without the aid, or suggestion of counsel.

Counsel for Schwed & Newhouse, and for Mr. Newhouse, the witness, insists that it is the witness' right to consult with his counsel before answering the question, the purport and intent of which is to show that he has rendered himself liable to penalty or forfeiture, and to advise with his counsel as to whether he shall answer the question or not.

Counsel for Schwed & Newhouse says to the witness, "Decline to answer unless you are allowed to consult with your counsel."

A. I decline to answer.

Q. 32. When did you take the books with you from Kansas City to Pittsburgh?

Objected to on the ground that it assumes that he has given evidence that he did take the books from Kansas City to Pittsburgh.

A. I decline to answer.

Q. 33. Where were you when you made collections that have been made on old accounts growing out of the Kansas City business that have been made since you returned to Pittsburgh from Kansas City?

A. Partly in Pittsburgh and partly traveling.

Q. 34. When did you make the entries in this ledger of collections of Kansas City accounts that have been made by you since your return from Kansas City to Pittsburgh?

A. I made them in Pittsburgh.

Q. 35. Where were the Kansas City books brought from when they were brought here to New York?

A. From Kansas City direct by express, all except the ledger.

Q. 36. Where was the Kansas City ledger brought from to this city?

A. It came here from Pittsburgh.

Q. 37. Did it come from the place of business which Schwed & Newhouse kept in Pittsburgh?

A. I don't know.

Q. 38. Were the entries of collections of old Kansas City accounts that have been made by you in this ledger since your return to Pittsburgh made in the place of business occupied by Schwed & Newhouse?

A. I don't remember as to that.

Q. 39. In what place of business in Pittsburgh was this ledger kept while there?

A. I don't remember.

Q. 40. What did you do with the money derived from the collections due Schwed & Newhouse January 26th, 1880, on account of the Kansas City business, that have been made by you since that time?

A. Spent it.

Q, 41. For what did you spend it?

Counsel for Schwed & Newhouse instructs the witness to decline to answer.

A. I decline to answer.

Q. 42. Turn to pages 2, 3, 4, 18, 19, 20, 21, 26, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50 and 51 of your Kansas City ledger and give us the amounts you have collected with the dates of such collections since January 26th, 1880, from customers to whom you had sold goods at that place?

A. On page 2, February 9th, 1880, $66.25. On page 3, L. Zahl, settled a balance of $209.81 by note, the note was given to me while at Kansas City; I don't know whether the note has been paid or not; I don't know the date the note was given; as far as I know I consider Mr. Zahl good for the amount of the note. On page 4, Richard Miller, February 7th, 1880, $100; April 3d, 1880, $80 and April 8th, 1880, notes $366.24; I don't know whether those notes have been paid or not. On page 18, April 19th, 1880, $46.25. On page 19, August 26th, 1880, by note, $85.89; I don't know whether the note was paid or not. On page 20, Mrs. S. R. Bear; in this case we took a note for $232.48; the party made an assignment and we received a very small dividend, the amount of which I don't know. On page 21, April 14th, 1880, $167.76, by notes; I don't know whether the notes were paid or not. On page 26, February 13th, 1880, $59.77, and August 10th, 1880, $65.10. On page 28, notes $468.25; that account is worthless to the best of my knowledge and belief, or I believe very doubtful. On page 28, May 25th, 1880, note $197.50; another note, I presume the same date, $195.74; I don't know whether those notes are paid or not. On page 30, February 4th, 1880, by notes, $152.46; these notes were paid. On page 31, by notes $193.82; I don't know whether these notes were paid or not. On page 32, February 3d, 1880, cash $8, January 22d, 1880, $100, note,

which has been paid. On page 33, February 2d, 1880, cash $25. On page 35, April 19th, 1880, $20.50, May 13, 1880, $70.24. On page 36, May 14th, 1880, $25, February 1st, 1881, notes $54.25; I don't know whether these notes were paid or not. On page 36, January 30th, 1880, $100, February 13th, 1880, $75, May 28th, 1880, $56.27, December 11th, 1880, $75.31. On page 38, May 19th 1880, $35.87. On page 39, February 2d, 1880, $48.50. On page 40, February 6th, 1880, cash $35, and sundries, $138.34; I don't recollect what these sundries were composed of. On page 42, May 28th, 1880, $20. On page 42, there are two entries of $50 each, without date. I think one is in Mr. Schwed's hand-writing. I think they probably were collected after January 26th, 1880, because the upper one is in the hand-writing of Mr. Schwed. On page 44, the last entry preceding January 26th, 1880, is January 19th 1880, the entries following are as follows: February, $35; cash, $30; April 28th, cash, $25; May 22d, cash, $25; cash, $37.41. On page 45, April 24th, 1880, $76.99. On page 46, in February 1880, $110.13. On page 48, May 18th, 1880, $33.78. On page 49, February 11th, 1880, $25, April 19th, 1880, $25, August 7th, 1880, $10. On page 50, May 20th, 1881, cash, $39.51. On page 51, May 11th, 1880, $202.96.

Direct examination closed.

Adjourned to Tuesday, March 15th, 1881, at 2:30 o'clock p. m.

N. Y., March 15th, 1881,
2:30 o'clock, p. m.

Met pursuant to adjournment.

Present counsel for respective parties.

Cross examination of Simon H. Newhouse by Mr. Creevey.

Q. 43. In your direct examination you were asked where was this ledger and the other Kansas City books of your firm when the sheriff levied his execution, and you answer the books as far as I remember were in the safe at the time the levy was made. Do you wish to correct that answer in any respect?

A. I do.

Q. 44. What correction do you wish to make?

A. All the books with the exception of the ledger were in the safe at the time the levy was made. I took the ledger home with me to look over some accounts, and it was at my home at the time the levy was made.

Q. 45. Under advice of your counsel, you declined to answer the following question, namely: "When did you take them out of the safe the last time?" Will you now answer that question, if you remember?

A. I don't remember.

Q. 46. You also declined to answer the following question, under advice of your counsel, namely: "When did you take the books with you from Kansas City to Pittsburgh?" You may now answer that question?

A. As far as I remember, I did not take any books from Kansas City, at all.

Q. 47. Certain of the bills, an abstract of which is shown in exhibit "Q," are made to Schwed & Newhouse and others, to Schwed & Newhouse, agents. Will you explain that if you are able?

A. They all should have been Schwed & Newhouse, Agts. In ordering the goods I was very explicit in directing to have them billed to Schwed & Newhouse, agts., and I presume the parties negiected to put it on.

Q. 48. I call your attention, now, to a certain cash-book, being the one that is missing. Have you any knowledge, or belief, or suspicion as to what has become of that book?

A. I have not.

Q. 49. When did you first miss it and search for it, if you have searched for it?

A. On the arrival of the books from Pittsburgh, at New York, we found it missing; we immediately searched, but have not found any traces of it.

Q. 50. Did you send to Pittsburgh to have search made there for it?

A. Mr. Schwed did, I believe.

Q. 51. You were asked on your direct examination in regard to ledger accounts of goods purchased by the Kansas City house. Were such purchases entered in the Kansas City ledger, and if not, why were they not?

A. They were not because the payments were mostly all made from the Pittsburgh house, to which place duplicate bills were ordered to be sent.

SIMON H. NEWHOUSE & CO.

Sworn before me.

J. M. DEVEL,
Special Examiner.

NOTICE TO TAKE DEPOSITIONS IN U. S. COURTS.

(Rev. Stat. U. S., Pages 162–3, Sects. 863–4–5.)

UNITED STATES OF AMERICA, } ss.
WESTERN DISTRICT OF MISSOURI, }

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ,
Co-Partners as WILLIAM SMITH & CO.,

against

EDWARD SCHWED and SIMON H. NEWHOUSE,
Co-Partners as SCHWED & NEWHOUSE.

You, the above named defendants or Bryant & Holmes your attorneys of record, are hereby notified that on Friday the 13th day of May, A. D. 1881, the above named plaintiffs will, in the above entitled suit, at the office of the clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, in the county of Jackson, in the city of Kansas, take depositions of Stanley Hobbs and Wm. H. Seeger, to be used as evidence on the trial of said suit and on the hearing of each and every motion and application therein. Said depositions will be taken because the testimony of said witnesses is necessary on the trial of said action, and said action is a suit in equity. And that the

taking of said depositions will be commenced at 9 o'clock a. m., of said day and that the taking of the same will be adjourned and continued from day to day, Sundays excepted, at the same place, until the taking of the same is completed.

Dated this 10th day of May, A. D. 1881.

BOTTSFORD & WILLIAMS,
SCARRITT & RIGGINS,
Attorneys for Plaintiffs.

Service of the above notice is hereby accepted, and issue of dedimus, filing of interrogatories, and all exceptions as to time are hereby waived this 10th day of May, 1880.

TICHENOR & WARNER,
BRYANT & HOLMES,
Att'ys of Record for Defendants.

UNITED STATES OF AMERICA,
Western Division of the } Sct.
Western District of Missouri,

Be it remembered, that on this 13th day of May, A. D. 1881, I, Warren Watson, a commissioner of the circuit court of the United States for said division and district, duly appointed, commissioned and qualified as such, did, under and by virtue of the several acts of congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the courts of the United States, cause to come before me at the office of the clerk of the circuit court of the United States aforesaid division and district, in Kansas City, Missouri, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon of said day the following persons, to-wit: Stanley S. Hobbs and William H. Seeger, to be examined as witnesses in a cause pending in the circuit court of the United States for said division and district, wherein William Smith and others are complainants, and Edward Schwed and others are defendants, on behalf of said complainants.

W. H. Seeger of lawful age being produced and sworn to testify the whole truth and carefully examined deposeth and saith:

My name is W. H. Seeger, my age is 25 years, residence, Kansas City, Mo., occupation is paying teller in the bank of Kansas City; have resided in Kansas City 22 years; have been engaged in banking business ten years; have been messenger, book-keeper, and teller; have kept the general and individual books of the bank; I have been receiving-teller and paying teller; I am a practical book-keeper; have handled books that were kept in bank during the last ten years; before that I kept my father's books, he was in the jewelry business.

Q. Have you examined exhibit "No. 15," signed Frank W. Hughey, notary public, and attached to deposition of Edward Schwed in this cause?

A. I have.

Q. You will please examine and state what relation the right hand page of said book bears to the left hand page of the same?

A. The left hand side is a memorandum of collections sent out and the right hand, of money received on collections.

Q. How do the amounts on the left-hand pages correspond with the amounts on the right hand pages?

A. They seem for the most part to balance each other.

Q. What do the right hand pages purport to be?

A. They seem to be returns for collections sent out; both cash and unpaid collections.

Q. Please turn to the pages in that book, the left hand of which is marked at the top "December," and the right hand of which is marked on the top "1880," and state whether these two pages correspond in the same manner as the others which you have examined?

A. They do not.

Q. Do the figures on these two pages, or the entries seem to have any relation to each other whatever?

A. They do not.

Q. Can you state any reason for the irregularity?

A. From the appearance of the books it looks as though a leaf was torn out.

Q. Can you state positively that a leaf was torn out?

A. From the appearance of the book it would seem a leaf had been torn out, and from the fact that the page is headed "December" on the left-hand side, and "1880," on the right hand side, and right below the heading of the right-hand pages it starts out January, 1880, so that the entries above on the same page could not have been December, 1880. I conclude a leaf is missing to offset the left-hand page.

Q. Can you tell whether or not there is more than one leaf missing?

A. I cannot.

CROSS-EXAMINATION.

Q. Please look at pages "May, 1879," and state whether the-right hand pages offset each other?

A. They do, all except one entry, which contains both the debits and credits on the left-hand page; there being hardly enough room on the right-hand page to enter it in its regular place.

Q. Please state whether the left hand page headed "December," about which you have been testifying is not evidently a continuation of the entries on the preceding left hand page, following the words "December, 1879?"

A. It is.

Q. Is it not evident that the figures which are at the head of the page opposite said page, headed "December," do not apply to the word "December," but are intended to indicate the year in which the entries on the page headed 1880, were made?

A. I should take it that way.

RE-EXAMINATION.

Q. In your examination of this book do you not find that the credits or memoranda occur on the right hand page immediately opposite to the entry on the left hand page to which they apply?

A. The majority of them do.

Q. On the pages marked "December" and "1880," do the entries on the page marked "1880" have any reference to the entries on the page marked "December."

A. They don't seem to have any.

Q. If, as you suppose, a leaf has been torn out, is it not evident that the entries on the page marked "1880" refer to some entries on a page which has been opposite said page marked "1880?"

A. It looks to me that way.

Q. Are the pages in the book which you have been examining numbered?

A. No, sir.

Q. Is there anything to indicate where the book was made, from whence it came, or from whom it was bought?

A. No, sir; nothing that I can see.

W. H. SEEGER.

Sworn to and subscribed to before me this 13th day of May, 1881.

WARREN WATSON.
Com. U. S. Cir. Ct. West'n Dist. Mo.

Not being able to complete the taking of said depositions for the reason that the hour of adjournment has arrived, I adjourn the further taking thereof until to-morrow morning, then to be continued at the place and between the hours mentioned in the annexed notice.

WARREN WATSON,
Commissioner U. S. Cir. Ct., Western District of Missouri.

Pursuant to adjournment on this 14th day of May, A. D. 1881, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon, at the office of the Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, I continued the taking of said depositions as follows:

Stanley S. Hobbs being produced, sworn to testify the whole truth, and examined according to law, deposeth and saith:

My name is Stanley S. Hobbs; I am 32 years old and reside in Kansas City; my occupation is that of book-keeper in bank of Kansas City; I am a practical book-keeper; I have handled account books about fifteen years; bank books about five years, and other books the rest of the time; I have studied hand-writing as relates to time of writing generally in my business as a book-keeper.

Q. Have you examined exhibit "No. 15," signed "Frank W. Hughey, notary public," and attached to the deposition of Edward Schwed in this cause?

A. Yes, sir.

Q. You will please re-examine the entries in said book and state what relation the entries on the right hand pages bear to the entries on the left hand pages?

A. The entries on the left-hand side are collections sent off and the entries on the right hand side are collections returned if not paid and payments.

Q. How do the amounts on the left hand pages correspond with the amounts on the right hand pages?

A. Those that seem to be paid agree; those returns on the amounts not collected have no amounts opposite them.

Q. Please turn to the pages in that book, the left hand of which is marked "December" and the right hand of which is marked at the top "1880," and state whether the amounts opposite each other on those two pages correspond in the same manner as the others which you have examined?

A. They do not.

Q. Do the figures or the entries on these two pages have any relation to each other whatever?

A. In my opinion they do not.

Q. Can you state any other reason why the figures on the right-hand page do not off-set those on the left-hand page as it occurs on other pages in in the book?

A. If the entries were ever made I would think that a leaf was missing from the book at this place.

Q. Is it not apparent that a leaf is missing?

A. In my opinion, it is.

Q. Please turn to the leaf marked at the top on the left-hand side, "1880," and on the right-hand side "November," and state whether or not, in your opinion, that is the companion leaf of the one torn out?

A. I am unable to say.

Q. From the general appearance of the book, from the appearance of the writing, and from the similarity of hand in which it is written, when, in your opinion, were the entries in said book written; I mean, taking the book as a whole from beginning to end, and also in comparison with exhibit "No. 14," signed "Frank W. Hughey, Notary Public," which purports to be a book containing the same kind of entries and immediately preceding this one?

A. In my opinion, the entries in "No. 15" were written some time after the entries in "No. 14."

Q. In your opinion, how long after?

A. That I couldn't tell.

Q. In your opinion, within what time were the entries in "No. 15" made?

A. In my opinion, within two years from this time.

CROSS-EXAMINATION.

Q. When and by whom were the matters about which you have testified in your examination-in-chief suggested to you?

A. By Mr. Ed. Scarritt, some two or three months ago.

Q. Is Mr. Scarritt the attorney who conducted your examination-in-chief?

A. Yes, sir.

STANLEY HOBBS.

Subscribed and sworn to before me this 14th day of May, A. D. 1880.

WARREN WATSON,
Com. U. S. Circuit Court, Western District of Missouri.

UNITED STATES OF AMERICA,
WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI. } SCT.

I, Warren Watson, a Commissioner of the circuit court of the United States for said division and district, duly commissioned, qualified and acting as such, under and by virtue of the several acts of Congress, authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the circuit and district courts of the United States, do hereby certify that the witnesses whose depositions are above set forth, are material and necessary to the proper determination of the said cause, in the caption set forth and described; that a notice of the time and place of the taking of said depositions, and the names of the witnesses to be examined, signed by Botsford & Williams and Scarrett & Riggins, attorneys for plaintiff, was served on Tichner & Warner and Bryant & Holmes, on the 10th day of May, A. D. 1881 which said notice is hereby returned.

And I further certify that I was attended at the office of the clerk of the United States circuit court, for said division and district aforesaid, by Ed. L. Scarrett, on behalf of the plaintiff, and D. B. Holmes, on behalf of the defendants, and the witnesses, to-wit: Stanley S. Hobbs and William H. Seeger, who were of sound mind and lawful age, and were by me sworn and examined, and their examination by me reduced to writing, and subscribed by them in my presence, on the 13th and 14th days of May, A. D. 1881, between the hours in that behalf first aforesaid. I do further certify that I am not of counsel nor attorney for either of the parties to the suit in controversy, or in any way interested in the event of said suit.

In testimony whereof, I have hereunto set my hand, this 14th day of May, A. D. 1881, at my office in Kansas City, in the said district.

WARREN WATSON,
Commissioner U. S. Circuit Court, Western District of Missouri.

EXHIBIT ——

March 9, 1881. S. DEKAY,
U. S. Com'r.

NOTICE TO TAKE DEPOSITIONS IN U. S. COURTS.

(Rev. Stat. U. S., Pages 152–3, Secs. 863–4–5.)

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF MISSOURI, } ss.

In the Circuit Court of the United States, for the Western District of Missouri, Western Division.

WILLIAM SMITH, JOHN SMITH, O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE, and GEO. D. BRIGGS, *Plaintiffs*,

against

EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY, *Defendants.*

You, the above named defendants, or Bryant & Holmes and Tichnor & Warner, your attorneys of record, are hereby notified that on Monday, the 7th day of March, A. D., 1881, the above named plaintiffs, will, in the above entitled suit, at the law office of N. Gano Dunn, Esq., No. 76 Nassau street, in the City of New York, in State of New York, take depositions of Charley A. Shepherd, William Smith and N. Gano Dunn, to be used as evidence on the trial of said suit, and on the hearing of each and every motion and application therein. Said depositions will be taken because the testimony of said witnesses is necessary on the trial of said action, and said witnesses live more than one hundred miles from the place of trial of said action; and that the taking of said depositions will be commenced at nine o'clock, A. M., of said day, and the taking of the same will be adjourned and continued from day to day, Snndays excepted, at the same place, until the taking of the same is completed.

Dated this 17th day of February, A. D. 1881.

SCARRETT & RIGGINS and
BOTSFORD & WILLIAMS,
Attorneys for plaintiffs.

Service of the above notice is hereby accepted, and issue of dedimus, filing of interrogatories and all exceptions as to time, are hereby waived this 17th day of February, 1881.

BRYANT & HOLMES and
TICHENOR & WARNER,
Attorneys of record for defendants.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss.

Be it remembered that on this seventh day of March, A. D. 1881, I, Sidney DeKay, a commissioner of the Circuit Court of the United States for the Southern District of New York, duly appointed, commissioned and qualified as such, did under, and by virtue of the several acts of Congress, authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the courts of the United States, cause to come before me, at the law office of N. Gano Dunn, Esq., No. 76 Nassau street, in the City and County of New York, and between the hours of two o'clock p. m., and half past four o'clock p. m. of said day, the following person, to-wit: William Smith, to be examined as a witness in a cause pending in the Circuit Court of the United States, in and for the Western District of Missouri, wherein William Smith, *et al*, are plaintiffs, and Edward Schwed, *et al*, defendants.

And the said William Smith, of lawful age * * * *

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss.

WILLIAM SMITH *et al.*
vs.
EDWARD SCHWED *et al*,

Before Sidney DeKay, U. S. Commissioner, S. D., N. Y., March 7th, 1881.

Present—For the Plaintiffs, J. S. Botsford, Esq.;
For the Defendant Heller, Mayer Sulzberger, Esq.;
For the Defendants Schwed & Newhouse, Simon Sterne.

William Smith being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Question by plaintiffs' counsel. What is your name, age, residence and place of business?

A. William Smith; aged fifty-three; I reside in Brooklyn, 538 Bedford avenue; my place of business is No. 25 Maiden Lane, New York.

Q. Of what firm are you a member, and in what business is the firm engaged?

A. Firm of William Smith and Company, the plaintiffs in this case, doing the business of manufacturers of jewelry.

Q. Please examine this paper and state what it is?

Paper handed to witness.

Objected to as the paper is itself evidence of its contents.

A. It is a circular received through the mail by the firm of William Smith & Co.; received some time in February, 1880.

Paper offered in evidence marked plaintiffs' exhibit "A."

Objected to, as it is not traced to defendants, or either of them.

Q. Do you know the firms of Julian Gallette; Lincoln, Tift & Co.; H. F. Barrows; Freeman & Co.; J. W. Bichards & Company; Ernest Thomo; Silcocks & Cooley; Seth Thomas Clock Company; Owen & Company, all of New York, and William C. Greene & Co.; Potter and Buffington; Fanning & Potter, Ballou & Company; Waite, Smith & Company, and White & Company, all of Providence, Rhode Island; R. Blackington & Co.; W. & S. Blackington and Bates & Bacon, all of Atterbury, Massachusetts, from whom William Schwed has testified that Schwed & Newhouse usually bought goods?

A. I do.

Q. Do you know the character of Jewelry sold by those firms? If you do please state the same full and particularly?

A. Some of them sell gold goods, and some of them plated goods, and some sell watches. The plated goods are mostly of a good kind; and nothing that we call cheap goods, and the gold goods, those that are sellers of gold goods, make good gold goods.

Q. Please state whether these parties sold what you call cheap jewelry and what the difference is between what you term cheap jewelry and the plated goods which were sold by these houses?

Objected to as irrelevant.

A. There is only one house that I recognize in that list as selling what we call cheap goods; that is Freeman & Company. Their goods, to the best of my knowledge, are what is termed "gilt goods." The other houses which are put down there as dealing in plated goods make what is termed in the trade "rolled-plate goods." The difference in plated goods and gilt goods is theplated goods are made from a plate of gold soldered onto a plate of composition; the gilt goods are made from a plate of composition, then covered with a thin deposit of gold from a galvanic battery.

Q. Please state what you mean by the expression gold goods?

A. Goods made from solid plate of gold.

Q. Please state how long you have been in the jewelry business?

A. About 35 years.

Q. Please state what those letters are? Handing two letters to witness.

A. They are two letters I received from Mr. Newhouse in November last.

Q. Are you acquainted with the hand-writing of Mr. Newhouse?

A. I think I am.

Q. In whose hand-writing are said letters and on the envelopes containing them?

A. I should say they were in Mr. Newhouse's hand-writing.

Letters and envelopes offered in evidence marked plaintiffs' exhibits "B" and "C."

Objected to as irrelevant and incompetent.

Q. Please state whether you have recently been in Pittsburgh, Pa., and whether you saw or examined the signs on the stores of Schwed & Newhouse?

A. I have, and I did examine them.

Q. Please describe said signs fully?

Objected to as irrelevant.

A. One sign was under their window fronting on Wood street, I think about twenty feet long; that one was, I should judge, about eighteen inches wide, with the name of Schwed & Newhouse on it. There was one on Fifth avenue, a hanging sign, about four foot long, and I should say about two foot wide, with the mame of Schwed & Newhouse, jobbers of watches, jewelry and materials; one over the door on Fifth avenue, about two foot long and about eighteen inches wide, with the names of Schwed & Newhouse, jobbers of jewelry; there was one on the glass door, as you go up stairs, about four foot long, with the name of Schwed & Newhouse, painted in large black and yellow letters; in one corner painted black letters about three-fourths inch, "agts."; there was one small sign on the door of their office with the name Schwed & Newhouse on it. That is as near as I can describe it.

Q. What were the relative sizes of the letters composing the words Schwed & Newhouse, and the letters "agts." on the door?

Objected to as incompetent.

A. The letters Schwed & Newhouse were about, I should say, five and a half inches high, and the width about three inches, the width of the letters "agts." was about half an inch.

Q. About what was the size of the letters on the sign on Wood street?

A. I should think about twelve inches high and from seven to eight inches in width, I should judge.

Q. Were the letters "agts." on that sign?

A. I did not see them.

Q. Please state about the sizes of the letters on the other signs on Fifth avenue, then the one on which the letters "agts." occur?

A. They varied from three to five inches in height.

Q. Did you find the letters "agts." on any other sign on Fifth avenue than the sign on the door?

A. I did not.

Q. How did you come, and what examination did you make before discovering the letters "agts." on the sign on the door.

Objected to as irrelevant.

A. I was looking for the word "agents," as Mr. Schwed had in his deposition stated in answer to Mr. Botsford, that the signs were altered; when I got there I could find no alteration on any of them, and was about coming away when I walked up close to this glass sign, and finally found the word "agts." in small black letters.

Q. Would a person in passing by Schwed & Newhouse's, on Fifth avenue, giving such attention to the signs as is usually given by people in passing, ordinarily observe said letters "agts"?

Objected to as being cross-examination.

A. They Would not.

Q. How long had you looked at the signs before you turned away, as you have stated, and looked at the front door and discovered said letters "agts."?

A. About fifteen minutes.

Q. Did you examine the business card of Schwed & Newhouse in the City Directory of Pittsburgh, for 1880 and for 1881; and if so, please give the words of said card?

Objected to as leading and misleading the witness, and for attempting to prove written papers by oral evidence.

A. I did. The words were "Schwed & Newhouse, jewelers."

Q. Did Mr. Newhouse come to you in this city, or in Brooklyn, in the month of December, or January last, and have a conversation with you relative to this case?

Objected to, so far as it may affect defendant Heller.

A. He visited me at my office.

Mr. Sterne counsel for Schwed & Newhouse objects to any conversation relating to a compromise of this action as privileged.

A. continued.—It was on or about the last of January, 1881. He had a conversation with me relative to this case.

Q. Please give that conversation fully?

A. He wanted to know if I wouldn't let up in this case. I think those were his words; as he was poor. I asked him what he had to offer as a settlement in the case.

Mr. Sterne renewed his objection as above, to any part or portion of this question.

A. continued.—He made me an offer of twenty-five cents in endorsed paper, payable in six and twelve months. I refused, stating that I had no compromise to make; that I wanted my claim in full. He said he was unable to pay. I then asked him if Mr. Heller would accept twenty-five cents on his claim. He said no, he would not. Then I said, why should I? He said Mr. Heller's claim was a just claim for borrowed money. Then I asked him if mine was not a just claim. He said it was. Then I said, I see no good reason why I shouldn't get one hundred cents for my claim as well as Mr. Heller. I then asked him why he was so much more anxious that Mr. Heller should get his claim than he was that I should. His answer was, if we stop suit in this case, that they would have the use of the money. I then said, well, if you will secure my claim, I will give you any reasonable time to pay it, so that you can get this money. He then asked me if I would not make any compromise, and what it would be. I answered I had no compromise to make, but would give him any reasonable time that would suit him, provided he gave me satisfactory security; that is all, I think, that I remember now.

Mr. Sterne moves to strike out the foregoing answer on the grounds that it relates to a compromise and is privileged.

Q. Has Schwed & Newhouse, or either of them, in any manner, or at any time controverted the amount of your entire account against them or any item thereof?

A. Not to my knowledge.

Q. Have they ever questioned the correctness of the account on which you have sued them?

A. No, sir.

Q. Has Mr. Newhouse, within the last two weeks, called on you and had a conversation with you regarding this case; if so, please state when and where he called on you and what conversation was had?

Objected to so far as it is proposed to affect Mr. Heller by any such conversation. Mr. Sterne objects to the question as last before.

A. He called on me on March 4th, 1881, at my residence in Brooklyn. He was apparently feeling very bad, and stated that the house had been served with a notice the previous day, by the marshal, and stated that he had come to see me, to see if we would not settle the case. I told him that he knew my views in the matter, that is, that I had told him before on what terms I would stop suit, or settle. He then stated that he could not possibly do it. I asked him if he had any proposition to make. He said he would make me an offer of fifty cents. I told him I would not accept it. He then asked me what, or in what way I would settle. I told him I would settle for one hundred cents on the dollar, interest and costs. He wanted to know on what terms that would be. I told him I would give him any reasonable time that he might ask but it must be secured. He wanted to know in what way it could be made payable. I said he could make notes payable once a month, or once in three or four months, as he chose. That I think was the substance of the conversation, except that he said he would think it over and see me in a day or two.

Wm. Sterne moves to strike out the foregoing answer on the grounds already stated.

Q. Did Mr. Newhouse in either of these conversations say anything as to the means or ability of Schwed & Newhouse to make payments, or anything as to the source from which they expected to derive the money to consumate the compromise which he proposed?

A. He stated that he had no money to make any compromise but that he had one or two friends who would endorse for him; that any settlement that he might make with the creditors would have to be on time.

CROSS-EXAMINATION BY MR. SULZBERGER.

Q. Have you ever sworn in this case either to an affidavit or a bill of complaint or any other paper wherein you said that Mr. Heller was not a creditor of Schwed & Newhouse?

A. Not to my knowledge.

Q. Have you ever authorized or directed anyone else so to swear for you, or on behalf of you, or on behalf of your firm?

A. I don't recollect that I have.

Q. Have you employed anybody or has your firm employed anybody directly or indirectly to swear to such a thing at any time since the first of January, 1880?

(Question read over at request of witness, after being written out by the commissioner.)

A. We employed Scarritt & Riggins to act as our attorneys and take all possible means in their power to investigate this case and take such proceedings as they thought proper.

Q. Did you ever instruct Scarritt & Riggins or did any member of your firm, or any one for you or your firm, instruct them that Mr Heller was not a creditor of Schwed & Newhouse?

A. Not to my knowledge.

Q. Would you know it if you had done so?

A. I don't know; I don't remember that I did; that is the only way that I can answer that question.

Q. Who swore to the papers in Kansas City on behalf of your firm; any papers?

A. I swore to the proof of the claim when I sent it out.

Q. Is that all you swore to?

A. All that I remember of now.

Q. Do I understand you now that to your knowledge no one in your house or employ, or by your authority, swore that Mr. Heller was not a creditor of Schwed & Newhouse?

(Objected to by plaintiffs' counsel, for the reason that the witness has stated that he gave his attorneys full authority and discretion to institute such proceedings in his behalf as they should deem proper, and said answer is a full answer to the present question.)

Not being able to complete the taking of said deposition for the reason that the commissioner and counsel have other engagements at this hour, to-wit, 4:30, p. m., I adjourn the further taking of the same until the 8th of March, 1881, at eleven o'clock, a. m., then to be continued at the place and between the hours mentioned in the annexed notice.

SIDNEY DE KAY,
U. S. Commissioner, Southern District of New York.

NEW YORK, No. 76, Nassau St.,
March 8th, 1881.

The respective parties met pursuant to adjournment.

Present—For Plaintiffs, J. S. Bottsford, Esq.
For Defendant Heller, Mayer Sulzberger, Esq.

And at eleven o'clock a. m., I continued the taking of said deposition.

William Smith in continuation of the cross-examination by Mr. Sulzberger deposing and saying:

Q. You have testified in chief that certain houses named by you sell certain kinds of goods; how do you know that.

A. I know some houses named there that make gold goods only and other houses that make plated goods only. I obtain my knowledge from parties that I am acquainted with that buy goods from them; also that they are known among the trade as being manufacturers of gold goods and manufacturers of plated goods.

Q. Your knowledge on that subject is based on information and common repute; is that so?

A. Not altogether; I have seen myself a large portion of those houses' goods.

Q. Do you consider yourself an expert?

A. I do.

Q. Is it possible for an expert, by seeing or inspecting goods, to tell their quality?

A. It is possible for a manufacturer, having been a manufacturer a long time in the business, to tell whether goods are gold goods or plated goods.

Q. By inspection?

A. Yes, sir; by inspection.

Q. What classes of goods have you ever manufactured?

A. We have manufactured plated goods, solid gold goods, solid silver goods.

Q. What is gold, as applied to jewelry?

A. Gold goods, as the term is applied to jewelry, are composed of gold, silver and copper to bring it to any required grade or quality of gold that they wish.

Q. What is the jeweler's ideal standard of pure gold called?

A. Pure gold is twenty-four carats fine; that is gold unmixed.

Q. What is the fineness of United States gold coin?

A. Said to be twenty-one and a-half carats fine.

Q. What is considered fine gold by reputable makers, like Tiffany, in gold jewelry?

A. I think that their goods usually vary from fourteen to eighteen carats fine—eighteen being the finest.

Q. What is the lowest standard used by manufacturers of what you call gold jewelry?

A. I have heard of some making it as low as six carats, from that up to eighteen; there are very few houses that I ever heard of, as making as low a grade as the lowest I have mentioned.

Q. Are there not many houses that make what is called gold jewelry of eight carat gold?

A. I think there are some; how many I cannot say.

Q. Is there not the same variation in standard in fineness in the manufacture of silver?

A. There are some variations in qualities of silver goods; there are usually about two qualities made, I believe?

Q. Is not the manufacturers' standard shifting according to the relative prices of the precious metals in the markets of the world?

A. Not to my knowledge.

Q. When the prevailing currency in the United States, for instance, is paper, which in the European market is far below par, is there not a tendency in the United States to lower the fineness of gold and silver in manufactures?

A. I think not; during the war they made very few gold goods, they were mostly plated goods.

Q. Were there not then, and have there not been since, lines of goods sold in the United States and universally accepted by the trade as gold or silver, which in point of fact were but plated?

A. Not to my knowledge. If that were so, the manufacturer deceived his customers; I don't know of any such case.

Q. By mere inspection, can you tell the difference between eight carat gold and twelve carat gold?

A. By looking at it, no, sir.

Q. How can you tell the difference?

A. By testing it with acids.

Q. By testing with acids can you tell the difference between eight carat gold and ten carat gold?

A. Yes, sir.

Q. How close can you come by testing with acids?

A. I cannot say how close I could come with acids. If I wanted a close test made, I would have to have an assay made. I don't think that by acids I could come closer than a carat, or a carat and a half.

Q. Have you ever tested or assayed any considerable quantities of

the goods manufactured or dealt in by any of the houses you have named?

A. No, I have not.

Q. If plated goods were covered with gold plate, the acid test would show them to be fine gold, would they not, if you did not know them to be plated?

A. It would stand the acid on the surface, but it would not stand the acid on the edges of plated goods.

Q. No one to your knowledge then, has invented a process by which edges of plated goods can be plated as well as the surfaces of the plated goods?

A. Not to my knowledge.

Q. As an expert, do you personally consider that the term gold can be honestly applied to the substance known as six-carat gold, containing, as it does, only twenty-five per cent. of that metal?

A. I do, if it is sold as six-carat gold, for the reason that it is customary to name it after the highest priced metal that it contains.

Q. If the gold were but four-carats, or three-carats, or two-carats, or one-carat, the highest priced metal would still be gold, would it not?

A. Yes, sir.

Q. On your rule then, if a man sold goods and billed them as one-carat gold, he would still be justified in calling the substance gold, would he?

A. I do not say that this is my rule. I believe it has been decided so by courts in cases that have been tried.

Q. About what is the percentage of other substances in six per cent. carat gold?

A. I cannot answer that properly, because I do not use that quality. If I did use it, I could answer you how it should be. If I was to make such a quality of gold, I should mix it six parts gold, twelve parts silver and six copper.

Q. By the word parts, do you mean parts in weight, or parts in size?

A. Parts in weight.

Q. Do you know the bulk of copper as compared with gold?

A. I should judge that copper would be about four times the size of gold, the same amount in weight.

Q. Do you know the bulk of silver as compared with gold?

A. I think about twice, or to twice and a half.

Q. Then is this calculation of six-carat gold right? The gold being made according to the proportions you suggested, of gold six parts in bulk, of silver thirty parts in bulk and of copper twenty-four parts in bulk, the gold being just one-tenth in bulk of the whole substance?

A. I cannot answer that question; it is beyond my comprehension.

Q. Can you make a calculation of the relative size of the gold in the substance known as six-carat gold to the other substances contained in the substance?

A. No, sir; I never measure it.

Q. Do you know whether jewelers put on their goods certain figures that are properly supposed to indicate their carat?

A. Some do, on some grades.

Q. Don't you?

A. We do, on some, yes.

Q. Don't you on plated goods?

A. No, sir.

Q. Isn't that custom of the trade to do so on plated goods?

A. Not to my knowledge; it may be done in some cases but not generally.

Q. Suppose a customer desires the figures "14" to be stamped on his goods, which he has purchased from a manufacturer, which goods are bought and sold as ten-carat goods, as between the manufacturer and his customer is it not the custom to stamp those goods with the figures "14," as requested?

A. I believe such things have been done, although it is not customary.

Q. The same answer would apply to plated ware, too, would it not; gold plated jewelry?

A. I don't know of any such case.

Q. Don't you make plated ware, yourself?

A. We do not, at present; we have done so.

Q. When making plated ware, was there not such a custom in the trade?

A. I never knew of any.

Q. It requires some knowledge of the business to understand the difference between gold jewelry and plated ware, does it not?

A. Yes, sir.

Q. Are there not large lines of jewelry whose chief value lies in what is called fashion?

A. I don't exactly know what you mean; the word "fashion" is not used in our business, to my knowledge.

Q. Are there not whole lines of jewelry that the intrinsic value of the metal is merely a small fraction of the whole cost of the goods?

A. They are.

Q. Are not such goods subject to extraordinary depreciation in value within one or two seasons afrer they are manufactured, by reason of changes of styles of goods worn?

A. There is a certain amount of loss on such goods by reason of change of style.

Q. Are you familiar with the trade in what is called "sets of jewelry"?

A. I am acquainted with some of them.

Q. When a new style in sets comes out, the price to the jobber is many times in excess of the value of the mere material, is it not?

A. That depends on whether it is plated or gold goods; if plated, it is several times in excess of the value of the material; but if gold sets, the value of the gold will generally predominate.

Q. Have you thought about that carefully?

A. I judge from my own goods; on my own goods, the value of the gold is the largest part of the cost to the purchaser. In regard to the sets it would depend a good deal on the style of the sets, for the reason that there are some sets that are made of all solid gold and engraved. There are other sets that are made from a portion of it gold and a portion of it stone. In a set of that class, there would be more loss in case of holding it after the styles went out. Jobbing jewelers are not very often caught with many such goods because they buy very few of any one kind at a time.

Q. What kind of goods do you make?

A. We make silver chains, and gold chains; gold rings, gold lockets, gold snaps, gold cuff pins, and gents' tail pins, etc.

Q. Do you not make ladies' sets?

A. No, not for some years.

Q. What is the relative value of the labor on a lady's fancy set, to the gold there is in it, supposing it to be twelve carats?

A. That would depend upon entirely what kind of jewelry it was; whether all gold or with stones in it.

Q. In either case?

A. I think in a gold set there would be about one-half the value of gold in it; and in a set where there was a stone in it there would not be quite as much.

Q. Then if a man was to purchase from you a set of ladies' gold jewelry made up without stones in it at the ordinary jobbing price, and were thereupon to put it in the melting-pot he would not get quite half his cost, would he?

A. He would get about half.

Q. The trade in stone sets has increased very much of late, has it not?

A. There are a good many stone sets sold and a good many that are not stones; I believe about as many of one kind as of another.

Q. In plated ware the value of the material as compared with the value of the labor is very much smaller than the figures you have given in reference to gold, is it not?

A. Yes, sir.

Q. How is it with chains?

A. In gold chains it depends upon the quality, the labor being as much on a low grade of chains as upon a high grade.

Q. The general run is of an inferior grade, is it not?

A. No, sir; I think not.

Q. Are there not more low grade chains sold than high grade?

A. I can only answer from my own experience.

Q. That I don't care for; I wish to know the general current of trade in the United States as regards gold chains?

A. I think there are more chains sold under twelve carats than above.

Q. Did you ever see Mr. Newhouse write?

A. I don't remember whether I ever did or not; I have received letters from him.

Q. Did you ever write any letters to Mr. Newhouse yourself personally?

A. Yes, I have.

Q. How long ago did you write the last one?

A. I wrote him in answer to exhibits "B" and "C," March 7th, 1881.

Q. Did you ever write to him on any other occasion?

A. I think I have; I think I have written him a number of times.

Q. When was the last time you wrote to Mr. Newhouse prior to the answers to those two letters?

A. It must have been previous to the forming of the partnership of Schwed & Newhouse.

Q. In what year?

A. I think they formed their partnership in 1871.

Q. Did he reply to the letter wrote him previous to 1871?

A. I can't answer; I don't know; I can add to that by saying I don't remember that I wrote him any letters even previous to that time, for he was on the road traveling from here and he would sometimes order some goods from me.

Q. When you received that first letter, dated November 4th, 1881,

signed S. H. Newhouse, did you remember, from the letters that you had received from Mr. Newhouse prior to 1871, the characteristics of his hand-writing?

A. I think that during the time of the partnership of the firm of Schwed & Newhouse that he wrote me some letters signed, of course, Schwed & Newhouse.

Q. You did not know that he wrote them, you merely thought so?

A. I recognized it as his hand-writing.

Q. Have you made the subject of hand-writing any particular study?

A. No, sir; not particularly.

Q. You never saw Mr. Newhouse write, did you?

A. I don't remember whether I have or not.

Q. Was not the true reason for your believing that the letter of March 4th, 1880, was written by Mr. Newhouse, the fact that it was signed S. H. Newhouse, and it spoke of some business in which Mr. Newhouse had an interest?

A. Partially so, and partially that I thought I recognized his hand-writing.

Q. When were you in Pittsburgh, recently, examining the signs you have testified to in chief?

A. I think I was there during the days from the 2nd to the 10th of February, 1881.

Q. On what day, or days, did you examine the signs you have spoken of?

A. On the 7th and 8th; on one of those days, and I think on both.

Q. What time in the day?

A. About mid-day; about one o'clock.

Q. Bright day, or dull day?

A. Bright day.

A. How many bright days did you see in Pittsburgh from the 2nd to the 10th of February?

A. They were partially all bright days and partially dull days.

Not being able to complete the taking of said deposition for the reason that the commissioner and counsel have other engagements, I adjourn the further taking of the same until two p. m., of this day at the same place.

SIDNEY DE KAY,
U. S. Commissioner, Southern District of New York.

Pursuant to adjournment, at 2 p. m., March the 8th, 1881, I continued the taking of said deposition as follows:

Q. Where were the signs with reference to a man's position upon the pavement in front of the store-house?

A. There was one hanging-sign hung out from the door about five feet four or five, about the heighth of the door; I should judge the bottom of the sign was about eight feet above the side walk, the other sign was over the door, I think about eight feet above the side walk. The other sign was on a swing glass door about four or five steps from the sidewalk; on this I saw the letters "Agts."

Q. You walked up the steps to see this?

A. Yes.

Q. Do you generally wear glasses?

A. Not on the street, but to read.

Q. How many years have you worn them?

A. Six or seven years.
Q. You did not then have on glasses?
A, No, sir.
Q. The letters "A g t s" you saw were about three-quarters of an inch in height?
A. Yes.
Q. How long have you known Mr. Schwed?
A. I think about fifteen years.
Q. And Mr. Newhouse?
A. About the same time.
Q. How long have you dealt with either or both of them?
A. Dealt with both of them for about fifteen years.
Q. Have you sold them any considerable amount in the aggregate?
A. I have.
Q. About how much; do you know without looking?
A. No; not without looking.
Q. Were your sales on credit with them generally?
A. Yes, sir.
Q. When did you sell anything last to Schwed or Newhouse?
A. The last sale, to the best of my recollection, was in November 1879; there might have been one in December, but I don't remember.
Q. In Pittsburgh you looked into a book which you supposed was a city directory; why did you think it was?
A. It was marked as such.
Q. Nobody told you so?
A. No, sir.
Q. (By Mr. Botsford),—Did you not ask at the hotel?
A. I was about to say that I asked for it at the hotel and the book was produced.
Q. (By Mr. Sulzberger),—You spoke of a business card of Schwed & Newhouse in that directory. Have you any knowledge as to who made up that directory; when the materials for it were collected; who printed it, or whether Schwed or Newhouse had any knowledge of the matter you read?
A. I have not.
R. In December, 1880, or January, 1881, when Mr. Newhouse visited you at your office did you ask him what he had to offer as a settlement of this pending case?
A. He made me—

Defendant Heller's counsel objects and insists upon direct answer to his question.

Plaintiffs' counsel insists that witness may answer in his own way.

A. He came to me—

Defendant Heller's counsel insists upon a direct answer, and if witness is going to repeat his testimony-in-chief at length we decline to accept answer, as it is not responsive.

Mr. Bottsford, for plaintiffs, informs witness that he can answer the question in his own way.

A. He came to me and stated that he was about coming to New York to open an office here; that he had already hired one but could not do a profitable business until he could get a settlement of the old matters

of Schwed & Newhouse; he then stated that he wanted to make a compromise with all his creditors and that he thought if he could get a compromise with Mr. Greene and myself that he could get a compromise with all his other creditors but that we were, as he thought, the only obstacle in the way of getting a settlement. I then asked him what settlement he had to propose. He then said that he had one or two friends that would endorse at twenty-five cents for him on six and twelve months. I told him I would not, nor could not settle in that way.

Q. Mr. Smith, did he mention the people who he said would endorse for him?

A. No, sir.

Q. Do you know Mr. Heller?

A. I never knew him until introduced to him here yesterday.

Q. What is called silver in the trade; of what substance is it composed?

A. Nothing but silver.

Q. Silver chains?

A. Silver and copper.

Q. Nothing else?

A. No, sir.

Q. They are melted together, are they not?

A. Yes; mixed.

Q. Are they then drawn out into wire and converted into chains?

A. Yes, sir.

Q. Is there no process of making silver-plated chains?

A. There is.

Q. What are they made of?

A. Ther are generally made of a composition and silvered over by galvanic process.

Q. What is the composition, brass?

A. Some of brass and some are made of German silver.

Q. German silver is not silver, is it?

A. No, sir.

Q. Are there any American manufacturers who sell similar goods to German silver under the name of silver goods?

A. Not to my knowledge.

Q. Was it never a custom of the trade of this country to sell brass chains silvered over, under the name of silver?

A. No, sir; sold under the name of silver-plated.

Q. They are not really plated, though?

B. Electro-plated.

Q. Do you stamp your rings?

A. We do not.

Q. Never put any figures on them?

A. No, sir; that is, gold rings.

Q. Do you stamp any others?

A. We have stamped silver rings—stamped them "coin."

Q. What is the fineness of American silver coin?

A. I think it is intended to be 900 fine.

Q. Is that not finer than rings?

A. Finer than some rings; some rings are made poorer?

Q. Is it not finer than the generality of rings stamped "coin?"

A. No, I think not; the generality of rings ought to assay finer; 875 or 880, including the silver.

RE-DIRECT EXAMINATION BY MR. BOTSFORD.

Q. Where is the firm of Schwed & Newhouse doing business now?

A. No. 10, Maiden Lane, New York.

Q. Since when have they been carrying on business there?

A. I don't know how long since they opened there; Mr. Newhouse came to see me about the 1st of February, 1881, he stated that he had hired an office; I saw a safe being moved in their about two weeks ago, which was said to be their safe.

Q. What business are they carrying on there?

A. Jewelry. I believe jobbers of jewelry.

Q. Wholesale or retail?

A. In my opinion, wholesale.

Q, Which is on the sign?

A. I could not say; I have not examined.

Q. Between what streets is Maiden Lane?

A. Between Nassau and Broadway.

Q. Has Mr. Newhouse ever said anything to you about the compromise with the creditors of Schwed & Newhouse?

A. He has.

Q. Please state what he said fully.

A. He stated that if he could get my name he could, or he thought he could, get all the others, and at the same time he offered me fifty cents. He asked me if I would sign his compromise papers of twenty-five cents, and that they would pay me the surplus in some other manner. I told him no; that I could not sign any such papers under any circumstances. That is, I believe, all.

Q. When was this suggestion made to you by Mr. Newhouse?

A. It was at my house, on Friday last.

Q. Please state fully the authority and instructions which you gave your attorneys in instituting legal proceedings at Kansas City.

A. As near as I can recollect I instructed them when I sent my claim to them to use all legal means in their power to investigate this matter and get the true facts in the case, and gave them power of attorney to act for me.

Q. Have you over expressed the opinion to any of your counsel that Schwed & Newhouse at the time of the confession of their judgment at Pittsburgh and Kansas City were indebted to Mr. Heller?

A. I think I have; I think I have expressed the opinion that I did not think they were, or did not believe that they were.

RE-CROSS EXAMINATION BY MR. SULZBERGER.

Q. Why did you say yesterday that you had no knowledge of any instruction being given by any member of your firm, or by you, or by any one for you or your firm, to your attorneys, Scarritt & Riggins, to the effect that Mr. Heller was not a creditor of Schwed & Newhouse?

A. I believe that I have not said that I instructed them that Heller was not a creditor. I said that I possibly said that I did not believe that he was.

Q. Did you say it, or is it only possible that you said it?

A. I say I did state that I did not believe he was a creditor. I will add to that, a creditor to the amount of the claim that he claimed to hold against them.

Q. The amount did not appear probable to you, did it?

A. I have said that I have no doubt but that he might have been a creditor to a small amount.

Q. Didn't you say to your counsel, at or about the time, that Mr. Heller was a man of small means and credit and of bad repute, and did not you have an investigation made and you were told the contrary?

A. No, sir; I never made any such statement. I am not in the habit, nor never did in my life try to do or do an injury to any man, and I certainly could not do so to Mr. Heller, because I did not know him.

Q. Did you cause detectives to go to Philadelphia to examine Mr. Heller's record?

A. I think that was done by my counsel.

Q. Was not the information you received that he was a man of means and credit?

A. It was.

Q. And good character?

A. Yes.

WM. SMITH.

Subscribed and sworn to before me at the place and at time aforesaid.

SIDNEY DEKAY,
U. S. Commissioner, S. D. N. Y.

UNITED STATES OF AMERICA, } ss.
SOUTHERN DISTRICT OF NEW YORK, }

I, Sidney DeKay, Commissioner of the Circuit Court of the United States for the Southern District of New York, duly commissioned, qualified and acting as such under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the circuit and district courts of the United States, do hereby certify that the witness whose deposition is above set forth, was deemed material and necessary to the proper determination of the said cause, in the caption set forth and described, and that the said witness is a resident of Brooklyn, in the County of Kings, in the State of New York, the same being at a greater distance than one hundred miles from the place of holding court to try the issues in this cause.

And I further certify that a notice of the time and place of taking said deposition and the names of the witnesses examined, signed by Scarritt & Riggins and Botsford & Williams, plaintiffs' attorneys, was served on the defendants' attorneys, Bryant & Holmes and Tichenor & Warner, on the day of , 1881, which notice is returned herewith, marked exhibit "X."

And I further certify that I was attended at No. 76 Nassau street, in the City and State of New York aforesaid, by J. S. Botsford, Esq.,———— Sulzberger, Esq., and Simon Sterne, Esq., and by the witness William Smith, who being of sound mind and lawful age, and by me sworn and examined, and said examination being by me reduced to writing and subscribed by said William Smith in my presence, as aforesaid.

I do further certify that I am not of counsel or attorney for either of the parties to the suit in controversy, or in any way interested in the event of said suit.

In testimony whereof, I have hereunto set my hand this ninth day of March, A. D. 1881.

SIDNEY DEKAY,
U. S. Commissioner for the Southern Dist. of New York.

Office of SCHWED & NEWHOUSE, AG'TS,
65 Fifth Avenue,
PITTSBURGH, Nov. 12th, 1880.

MR. WILLIAM SMITH,
25 Maiden Lane, New York City:

Your favor of the 6th inst. came duly to hand; would have answered the same sooner, but having been out of town for a few days, only just now came in possession of the same.

The tenor of your letter seems to be all one-sided, as the allegations contained therein cannot be substantiated by facts; for the facts are decidedly the other way. You state that my appeal to you comes rather late; you are aware that some of our acquaintances approached you in our behalf. As regards the expenses, we are very sorry for the same, but you could very easily have convinced yourself that the thing is not, as your attorneys represented, a fraud; and that Mr. Heller is not simply a straw man. The matter is only too true, which we can prove, as previously stated, to the entire satisfaction of everybody. If at any time you had so much faith in my integrity, I think the circumstances of our failure should, if anything, have strengthened rather than weakened it. Although perhaps appearances are against us, we did not, as you allege, buy heavier than usual. By referring to your ledger you will find that the first bill, when we started here in Pittsburgh, in 1871, was $1,482.37, and our purchases from you from April 3d to December 18th, that year, amounted to $5,766.24. On January 1st, 1873, there was a balance due you from us of $2,798.11

You will remember, Mr. Smith, that when I was getting ready last fall in New York, to go to Kansas City, you told me, yourself, in the course of conversation in your office, that I ought to buy at least $20,000 for Kansas City alone, for the competition against large Chicago houses was considerable. Instead of acting upon your advice, which, no doubt, was that of a friend, I thought I would regulate our purchases according to the amount of business. Instead, Mr. Smith, of buying $20,000, for Kansas City alone, my purchases for two wholesale jewelry houses (Pittsburgh and Kansas City), did not amount to over $15,000, all told. Your Mr. Shephard called on me several times in Kansas City, and I only bought one bill from him there, goods that we had to have. You know, as well as every one else in the trade, that our name was good enough for three times the amount of merchandise we owe for to-day ($28,000); but, Mr. Smith, Schwed & Newhouse did not want to take advantage of that, our object was to go to Kansas City, and once established there, to move out there from here, altogether, as you are aware of. We had not the remotest idea of anything of the kind to happen.

On January 26th, we were closed up, which was on a Monday. Saturday before we paid draft, I. H. Brown & Co. $125.57, in full. Amongst other payments, a few days before, you received, January 15th, $200 on account. When we were closed up in Kansas City, one thousand miles away from home, I had not $5 in my possession, with everything in the world in sheriff's hands. Regarding your assertion of fraudulent sale, that is a point to be proven. It is very easy to make assertions, but facts speak for themselves. We owed frequently, for Pittsburgh alone, twice as much as we do to-day for Pittsburgh and Kansas City put together. I have no doubt, Mr. Smith, if you consider the matter coolly, you will sympathize with us in our misfortune, for if there would not be any more fraud in any other transaction than can be found in our difficulties, the

commercial world could sail pretty smooth. You are in a position to help me materially out of our difficulties, and if you will extend a helping hand to unfortunate but honest people, you will have our thanks forever and you will have a chance to make up again. If we would be in a position to offer you 100 cents on the dollar we would not be in the position we are to-day. As stated in my previous letter, some friends of ours, who like to see us get along, volunteered to assist us if possible to effect a settlement, and to that end offered to endorse 25 cents on the dollar for us, six and twelve months, without interest, provided we can effect a settlement with all our creditors, which, Mr. Smith, is the best we can offer at present, for we have nothing to settle with. I am more than willing, I am, and always have been, anxious to do justice towards everybody, but at present, unfortunately cannot do any better.

The amount claimed by Mr. Heller is a just one, though a brother-in-law of Mr. Schwed; who, except a relative, and by-the-by a very kind one, would advance such an amount of money?

Begging you once more to consider the matter favorably, I shall be pleased to hear from you again. Respectfully yours,

S. H. NEWHOUSE.

OFFICE OF SCHWED & NEWHOUSE, AGENTS.
65 Fifth Avenue,
Pittsburgh, Nov. 4th, 1880.

MR. WM. SMITH—Dear Sir:

Anxious to have our unfortunate come to some early settlement, and for the purpose of accomplishing that end, the writer herewith takes the liberty of addressing to you personally a few lines. Having known each other for the past twenty years, you have seen the writer grow up from boyhood to manhood, you being the very first one I ever bought a bill of goods of in my own name in my life. You are aware, as well as everyone else with whom I came in contact, that I commenced life, like thousands of others, with nothing. You are also aware that by hard work, close economy and strict attention to business, I succeeded to work myself into business, thus getting a start in life, which I have every reason to believe, but for the panic which set in in 1873, (just about two years after we were started here,) would have ended in a very successful career. Circumstances which no one could control set in then, and as everybody is aware, upset houses of long standing. Like everybody else, we were effected, and ever since that time had difficulties to contend with. Knowing our reputation to have been a good one, it was the principal object of our lives to keep it so; we have struggled harder against fate than probably thousands of others would have done, simply to save an honest name, but the burden was too heavy and we had to succumb. Now, Mr. Smith, you have always professed friendship toward us; you at one time in my presence, and in the presence of other parties, expressed a wish that if you wish well to any house in the U. S., and which deserves to get along, that house is Schwed & Newhouse. If you will suit your actions to this sentiment, I assure you that none deserve it bettef, for though poor and unfortunate as we are, we have, thank God, the satisfaction of being honest, which everybody knows, and which can be proven to the entire satisfaction of anybody. Our principal object is, if possible, to get our unfortunate matter straightened out, and as far as I know you are the only one opposing us. You are aware that none of us is too old yet to commence over again, and we have the will to do it, and you will have a chance to make up for losses which we regret as much as any one can.

We have nothing, unfortunately, to settle with, but if we could effect a settlement with all our creditors, through the sympathy and assistance of friends, might perhaps be enabled to effect a compromise, as one or two of our friends is willing to assist us to that end. Will you, therefore, Mr. Smith, consider our unfortunate position? I beg of you to inform me what terms you would be willing to accede to.

I beg you, Mr. Smith, to give this matter the attention it deserves, and extend a lifting hand to unfortunate though honest people, rather than kick them down further. Trusting that this appeal may not be in vain, I Shall consider it a service rendered never to be forgotten through life.

Awaiting your favorable reply, I remain,

Respectfully Yours, &c.,

S. H. NEWHOUSE.

PLAINTIFFS' EXHIBIT "A."

March 7th, 1881. S. DEKAY, U. S. Commissioner.

PITTSBURGH, Feb. 12. 1880.

GENTLEMEN:

Through a series of unexpected business reverses, we have been unable to repay the confidential indebtedness, on the faith of which we have largely been enabled to pursue our business. Mr. Heller, who was our largest creditor of that character, who had waited long and patiently for a return of his money, suddenly and unexpectedly placed his claim for collection in the hands of the sheriff, who closed our business and sold our entire stock in trade. We hope at a very early date to be enabled to submit some offer of compromise to our creditors, to which end we have been promised assistance by one or two of our friends. Our present inability to pay our debts is as severe a blow to us as it must be unexpected to our creditors. We struggled against adverse circumstances until we had to yield, and our only consolation is, that our failure has been purely the result of misfortune and reverses, and in no way identified with anything fraudulent or dishonorable. We ask your patience for a short time, that we may be enabled to submit some offer of compromise, and we invoke the record of our career as business men as a pledge of the sincerity of these statements.

Respectfully Yours,

SCHWED & NEWHOUSE.

PLAINTIFFS' EXHIBIT "B." (An envelope.)

March 7th, 1881. S. DEKAY, U. S. Coms.

If not called for in ten days return to
SCHWED & NEWHOUSE, AGTS.,
Pittsburgh, Penna.

Postage Stamp.

Pittsburgh,
Nov. 12,
5 p. m.,
Pa

MR. WM. SMITH,
care Messrs. Wm. Smith & Co.,
25 Maiden Lane,
New York City.

On the back of said envelope appears the following:

New York,
Nov. 13,
12:30 p. m.,
80
Rec'd.

EXHIBIT "C." (Also an envelope.)

March 7th, 1881. S. DEKAY, U. S. Coms.

If not called for in ten days, return to
SCHWED & NEWHOUSE, AGTS.,
Pittsburgh, Penna.

Pittsburgh,
Nov. 4,
12 m.
Pa.

MR. WM. SMITH,
care Messrs. Wm. Smith & Co.,
25 Maiden Lane,
New York City.

The stamp on the back of the envelope, telling when it was received in New York, is so dim that it cannot be read.

NOTICE TO TAKE DEPOSITIONS.

In the Circuit Court, at Kansas City, for the County of Jackson, and State of Missouri.

WILLIAM SMITH *et al.*
Plaintiffs,
against
EDWARD SCHWED *et al.*
Defendants.

To the above named defendants, or to Bryant & Holmes, their attorneys:

You are hereby notified that depositions of witnesses, to be read in evidence in the above entitled cause, on the part of the plaintiffs, will be taken at the office of N. Gano Dunn, 76 Nassau street, N. Y., in the county of New York, state of New York, and on the first day of July, A. D. 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours until completed.

SCARRITT & RIGGINS,
BOTTSFORD & WILLIAMS,
Att'ys for Plaintiffs.

Service of the above notice is hereby acknowledged, and issue of dedimus, and all exceptions as to time waived.

Kansas City, Mo., July 2, 1880.

BRYANT & HOLMES,
Attorneys for Defendants.

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners, doing business under the firm name and style of William Smith & Co., and WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, co-partners, doing business under the firm name and style of William C. Greene & Co.

The Plaintiffs.

against

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners, doing business under the firm name and style of Schwed & Newhouse and H. HELLER, and O. P. W. BAILEY, Sheriff of Jackson County, Mo.

Defendants.

No. 4518.

DEPOSITIONS.

Depositions of witnesses produced, sworn and examined at the office N. Gano Dunn, Esq., 76 Nassau street, New York City, in the county of New York, before me, the undersigned, Joseph C. Wolff, a notary public in and for New York city and county, in a certain cause now pending in the circuit court of Jackson county, at Kansas City, in the state of Missouri, between William Smith and others, plaintiffs, and Edward Schwed and others, defendants, on the part of plaintiffs.

Byron W. Greene, of lawful age, being sworn and examined on the part of plaintiffs, deposeth and saith :

I am a member of the firm of William C. Greene & Co., one of the plaintiffs in the above action, having an office at No. 192 Broadway, New York City. I am personally acquainted with Messrs. Schwed and Newhouse, two of the defendants in this action. There was an order given by Mr. Newhouse for the sum of $235.18 for an assorted line of jewelry for the Pittsburgh house. The goods were shipped Aug. 12th, 1879. There was also an order given by him for their Kansas City place for the sum of $263.08 for an assorted line of jewelry. Those two orders were given to me personally by Mr. Newhouse, on or about the 12th of September, 1879. We received another order from the defendants Schwed & Newhouse, by mail; order marked Exhibit "A," and annexed to deposition. In response to this order we sent them a package from which they were to select goods. On or about September 27th we received a postal card from them; card marked Exhibit 'B,' and annexed to deposition. They retained goods out of the package sent September 16, 1879, amounting to $66.17. These goods were delivered to the firm of Sussfield, Lorsch & Co., of No. 13 Maiden Lane, N. Y., by direction of Schwed & Newhouse. We received on or about September 25th, 1879, another order from Schwed & Newhouse, for goods amounting to $143.58. These goods were ordered shipped to Schwed & Newhouse, Pittsburgh, Pa. Paper shown is duplicate express receipt received upon the shipment of the goods. (Paper Exhibit "C," annexed to deposition.) On or about Nov. 15th, 1879, I received from Mr. Schwed, personally, at Pittsburgh, Pa., an order for goods to be sent to Schwed & Newhouse, Pittsburgh, Pa., amounting to $304.92. These goods were shipped on or about November 24, 1879, to Schwed & Newhouse, Pittsburgh, Pa. Paper shown is

duplicate express receipt received upon shipment of the goods. (Paper marked Exhibit "D," annexed to deposition.) These goods were all sold on four months' time. None of these goods have ever been paid for. The aggregate amount now due William C. Greene & Co. for goods sold and delivered to Schwed & Newhouse, as above testified to, is the sum of ten hundred and twelve dollars and ninety-three cents, and this is the amount we claim in this suit. In August, 1879, when I received the order above testified to from Mr. Newhouse, he stated to me that the firm of Schwed & Newhouse were about to open a branch house at Kansas City, Missouri, and that he (Mr. Newhouse) was to be in charge of that branch, and that Mr. Schwed would continue to carry on the Pittsburgh, Pa., branch of the business. When I received the order from Mr. Newhouse, in August, 1879, I questioned him in regard to their financial ability to carry on two houses, and he replied that he considered the firm sufficiently able pecuniarily to do so. (Paper shown witness.) This paper is a correct list of all goods sold an delivered by Wm. C. Greene & Co. to Schwed & Newhouse, and shows each article sold to them and the price of each. (Paper marked Exhibit "E," and annexed to deposition.) The goods ordered by Mr. Newhouse in August, 1879, which were to be sent to him at Kansas City, Mo. He afterwards directed me to send to Potter & Buffinton, at Providence, R. I., and they were, pursuant to such directions, sent to that firm. (Paper shown witness.) This is a duplicate express receipt received upon the shipment of those goods. (Paper marked "F," and annexed to deposition). (Postal card produced and shown witness.) This is the order received from Schwed & Newhouse for the shipment of goods previously ordered to Potter & Buffinton, Providence, R. I. These were the goods amounting in value $235.18, shown on first page of "E." (Postal card marked Exhibit "G," and annexed to deposition.) All the goods set forth in Exhibit "E" consisted of an assorted line of jewelry.

BYRON W. GREENE.

I, Joseph C. Wolff, a notary public in and for the city and county of New York and state of New York, do hereby certify that Byron W. Greene, whose place of residence is in the City of New York, in the county and State of New York, was by me sworn to testify the whole truth of his knowledge tending the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed to by him in my presence on the 1st day of July, 1880, between the hours of 12 m. and 2.30 p. m., at the city, county and state of New York.

JOS. C. WOLFF,

[SEAL.] Notary Public in and for N. Y. &c.

In the United States Circuit Court for the Western Division of the Western District of the State of Missouri.

WILLIAM SMITH *et al.*, *Plaintiffs*,
against
EDWARD SCHWED *et al.*, *Defendants.*

It is agreed that all objections to the testimony, or any part thereof, contained in the depositions taken in behalf of the plaintiffs at the law office of Botsford & Williams, on February 24, 1881, on the grounds of irrelevancy, immateriality, or illegality, or incompetency, as against the

Q. Did you examine the stock, and if so, who was present during the examination you made?

A. The sheriff; Mr. Bailey was present, for one; Mr. Newhouse was there most of the time; I am not sure but that he was there all the time. One of their traveling men was there helping me to arrange the goods. I examined the stock thoroughly in the presence of these men.

Q. How many safes were there in the store?

A. I think but one.

Q. What kind of a lock did the safe have?

A. I think a combination lock.

Q. Who unlocked the safe when the examination was made?

A. Some machinist whom they called in?

Q. Was Mr. Newhouse present when the safe was opened or about that time?

A. I think he was.

Q. State what portion of the stock was contained in the safe when it was opened?

A. The greater portion in value; five-sixths in value at least.

Q. Please describe as nearly as you can the goods contained in the safe, and also the character of the goods not contained in the safe?

A. The safe contained gold and silver watches, gold and silver chains, gold plated chains gold and plated rings, seals and charms, pins, ear-drops, lockets, and other kinds of jewelry. The goods not contained in the safe, were clocks, watchmaker's tools, clock material, watch keys and watchmakers' supplies generally.

Q. Did you hear Mr. Newhouse say anything before or after the safe was opened as to the kind or value of the goods contained in the safe?

A. I did; I am not positive whether his statement was before or after the safe was opened; I am inclined to think it was before the safe was opened, but am not positive; I am positive it was before I examined the goods.

Q. What did Mr. Newhouse state in regard to the value or quality of the goods contained in the safe; please answer fully, and give all he said, as nearly as you can recollect it?

A. He said that the goods were mostly of the cheapest kind of such goods, as peddlers usually sold through the country; that there was very little gold goods in the safe.

Q. Did Mr. Newhouse say anything as to about what the goods contained in the safe were worth?

A. I don't think he did in my hearing.

Q. What did you find, on an examination of the goods contained in the safe, to be their value and quality; please state fully, stating also how you went over the stock, and all you did in making the examination?

A. I found the goods very much better than I had expected from what I had been told. I sorted them over carefully piece by piece, seperating the gold from the plated; and their value as near as I could estimate, three or four times what I had expected.

Q. About what was the value of the entire stock in the store at cost prices, to Schwed & Newhouse?

A. I estimated it after going through it at from twelve thousand to fourteen thousand dollars.

Q. About what was said stock worth at wholesale selling prices?

A. About twenty-five per cent. over the twelve or fourteen thousand dollars, or about fifteen or sixteen thousand dollars.

Q. About what was the stock worth if sold at retail; I mean if sold

at prices at which retail jewelers customarily sold such good at that time?

A. The stock would bring from twenty thousand to twenty-two thousand dollars.

Q. In one of your answers you say, "I found the goods very much better than I had expected from what I had been told." Please state to whom you referred in giving this answer?

A. I got my first impression from the sheriff, and also from what Mr. Newhouse said as to quality of the goods.

Q. Had the sheriff made a personal examination of the stock before that made by yourself?

A. I do not know.

Q. Did he give any reason to you why he desired you to examine the stock?

A. He gave two reasons. The first reason was that he wanted me to arrange the stock so that he could tell the cheap goods from the good goods. The next reason was, he wanted me to examine the goods to see if I might not want to buy them.

Q. Had you prior to your examination received an definite information from any person except Mr. Newhouse, as to the quality or value of the goods?

A. No; I had not.

Q. Did the sheriff, when he made the request of you, state what his information was as to the quality or value of the goods, if so, please state what that information was and how he obtained it?

A. He told me that Mr. Newhouse had stated to him that the goods were all of a very cheap quality and not worth perhaps over two thousand dollars.

Q. What do you mean your answer when you say "their value as near as I could estimate, three or four times what I had expected?"

A. I found more goods and that they were of a better quality than I had expected from what Mr. Newhouse and Mr. Bailey had told me.

Q. What portion of the goods in value contained in the safe did you find to be solid goods?

A. I should say about one-third.

Q. What portion of the goods were plated?

A. Nearly all that was not gold.

Q. Please described fully the quality of the plated goods?

A. Two-thirds of them perhaps were what are called a good article of "rolled plate," the balance "electro plate" and "fire gilt."

Q. During your examination of the stock, and as you went over it piece by piece, did Mr. Newhouse say anything about the different items of the stock, as they were passed over by you?

A. He did; yes, sir.

Q. Please state what was said by him and you to each other respecting the quality or value of the different items as they were passed?

A. As we passed over the goods he invariably put a lower estimate on the goods than I did. In several instances pronouncing goods plated that I considered gold.

CROSS-EXAMINATION BY D. B HOLMES, COUNSEL FOR DEFENDANT.

Q. Please state the actual market value at Kansas City, as near as you can, of the entire stock to which you have referred as having been examined by you, I mean at the time that you examined said stock?

A. My judgment now is that it was worth at wholesale from fifteen to sixteen thousand dollars; and at retail, from twenty to twenty-two thousand dollars.

Q. State, if you know, how it happened that a machinist was called in at the time to which you have referred, to open the safe?

A. It was stated there that the lock was out of order.

RE-EXAMINATION.

Q. You did not examine the lock to see whether it was in order or not, did you?

A. I did not. LUCIUS S. CADY.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JOSEPH S. RUST,
[SEAL.] Notary Public.

And the said Charles S. Shepherd of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Q. What is your name, age, and business?

A. My name is Charles S. Shepherd; my age is thirty-four years; my business is traveling salesman for William Smith & Co., plaintiffs in this case.

Q. How long have you been engaged in the jewelry business as traveling salesman or otherwise?

A. About twelve years, as salesman.

Q. Were you present at the sale of the Kansas City stock of Schwed & Newhouse which was had under the order of the court in the suits of the attaching creditors.

A. I was.

Q. Did you at that time, or prior to thereto, examine said stock and ascertain its value?

A. I did.

Q. About what did you ascertain the stock to be worth, at cost prices, to Schwed & Newhouse?

A. I should judge from thirteen to fourteen thousand dollars.

Q. About what did you ascertain the value of the stock to be at Schwed & Newhouse's selling prices?

A. About seventeen thousand five hundred dollars.

CROSS-EXAMINATION BY D. B. HOLMES, COUNSEL FOR DEFENDANT.

Q. What, in your judgment, was the actual market value of that stock at Kansas City, at the time to which you have referred.

A. About seventeen thousand five hundred dollars.

Q. In the estimate made by you, did you, or not, include the iron safe and other fixtures levied on by the sheriff?

A. I did not.

Q. Do you know what their market value was at that time?

A. From one hundred and seventy-five to two hundred dollars, likely. CHARLES S. SHEPHERD.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JOSEPH S. RUST,
[SEAL.] Notary Public.

And the said O. P. W. Bailey, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith :

Q. What is your name and place of residence ?

A. My name is O. P. W. Bailey; my place of residence is Independence, Missouri.

Q. What official station did you fill in 1879 and 1880 ?

A. I was then sheriff of Jackson county, Missouri.

Q. Did you sell the Kansas City stock of Schwed & Newhouse under an order of sale in the suits of their attaching creditors ?

A. We seized and sold a stock of jewelry, clocks, etc., found in their store-house, on Delaware street, Kansas City, Missouri.

Q. What was the amount of the proceeds of said sale ?

A. The gross amount of the proceeds of said sale, as shown by our sale-books, was $8,254.28.

Q. Is the money derived from said sale still in your hands ?

A. Yes; the proceeds of said sale are still in my hands.

Q. Did you, at or about the time of the levy, make any request of Mr. Newhouse, about the opening of the safe in their store ?

A. I did make such request on the morning of the 4th of March, 1880.

Q. Please state what that request was ?

A. I will state that the safe had not been opened by me or any of my deputies up to that time; not knowing the combination of the safe I requested Mr. Newhouse to open it, which he attempted to do but failed; I afterwards employed a locksmith who succeeded in striking the combination and opened the safe.

Q. Did Mr. Newhouse give you any reason for not opening the safe ?

A. The reason he gave was that the lock was not in perfect order.

Q. Did Mr. Newhouse make any statement to you as to the value of the goods contained in the safe ?

A. On the morning mentioned we had a conversation as to the quality and value of the stock in store; this conversation was both before and after the safe was opened.

Q. Please state what that conversation was ?

A. I asked him what the stock was worth; I cannot say that he placed a valuation at that time on the stock. He stated, however, that the goods were of a cheap quality and not valuable.

Q. Did Mr. Newhouse, at any time prior to the sale, make any statement to you, or in your presence, as to about what the goods in the safe were worth ?

A. I can't say positively that he placed any valuation on the stock, but led me to believe that the stock was of very little value.

Q. Did Mr. Newhouse make any suggestion to you as to how the safe and its contents should be sold ?

A. He did suggest that the whole stock be sold in bulk; that is the entire stock in the store.

Q. Did he ask you to so make the sale ?

A. He asked me if the sale could be so made.

Q. Did he ask you the same question respecting the sale of the safe and its contents ?

A. I believe he did.

Q. Were these questions asked before ar after the safe was unlocked?

A. Before and after, I believe, I am not positive.

Q. Did he ask you if the safe and contents could be sold without opening the safe?

A. I am not positive, but think he did.

Q. Did you get Mr. Cady, of this city, to examine said stock?

A. I did get Mr. Cady to examine said stock, and also to assist me in taking an inventory of said stock of Schwed & Newhouse.

Q. Were these conversations of Mr. Newhouse, or any of them, before you got Mr. Cady to examine the stock?

A. Yes, the conversation of Mr. Newhouse and myself, or at least one or more of them, were had before I got Mr. Cady to examine the stock

Q. How did the locksmith unlock the safe?

A. By a series of trials and at last striking the combination.

Q. Did he open the safe without the use of any tools?

A. He did open the safe with the use of tools.

Q. Was the lock out of repair?

A. Yes, I am satisfied the lock was out of repair at that time, from the trouble I had with it after it was removed from the store in endeavoring to unlock it after the combination was furnished me.

Q. What official station do you fill at the present time?

A. Probate judge, of Jackson county, Missouri.

CROSS-EXAMINATION BY D. B. HOLMES, COUNSEL FOR DEFENDANTS.

Q. Please state whether or not, after you were furnished with the combination of the lock on the safe referred to, you ever found it necessary to employ a locksmith to open it for you; if so, how often?

A. I did find it necessary after the combination was given me to employ a locksmith two or three different times.

Q. Can you state whether or not the combination furnished you by the locksmith was the same as that used by Mr. Newhouse in his endeavors to unlock it?

A. In my endeavors to unlock the safe, I had both the combinations as furnished by Mr. Newhouse and the locksmith on cards, as furnished by both those gentlemen.

Q. Can you state in what respect the combinations furnished you were different?

A. They were precisely the same.

O. P. W. BAILEY.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JOSEPH S. RUST,
Notary Public.

[SEAL.]

And the said Joseph Green, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Q. What is your name and place of residence?

A. My name is Joseph M. Green; my residence is Kansas City, Missouri.

Q. What official station did you fill in Jackson county, Mo., in 1880?

A. Deputy sheriff.

Q. Did the execution in the case of H. Heller against Schwed & Newhouse come into your hands, and if so, what did you do with it?

A. It did, and I levied on the stock of goods of Schwed & Newhouse.

Q. Did Mr. Newhouse at any time make any statement to you as to about what was the value of the goods levied on and in the store?

A. I don't think he did. I don't remember positively. I asked him several times about what the stock was worth. I then asked him if it was worth $5,000. He said it would take some time to get that out of it. I think he said it would have to be peddled out to bring that, or sold at retail. I don't remember exactly his words.

Q. Did he at any time say anything as to the quality of the goods?

A. Yes, he said they were all cheap goods.

Q. Was there any conversation at the time of the levy, or afterwards, about the opening of the safe, between Mr. Newhouse and yourself?

A. I don't think there was. I think the safe was open when I went in to make the levy.

Q. Who closed the safe while the levy was made?

A. I don't remember. He (Mr. Newhouse) opened the safe once or twice for me after that and before the inventory was taken.

JOS. M. GREENE.

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid.

JOSEPH S. RUST,
Notary Public.

[SEAL.]

UNITED STATES OF AMERICA,)
WESTERN DISTRICT OF MISSOURI.) ss.

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

I, Joseph S. Rust, notary public, duly commissioned, qualified and acting as such, under and by virtue of the several acts of congress authorizing and regulating the taking of depositions *de bene esse* in civil cases depending in circuit and district courts of the United States, do hereby certify that the witnesses whose depositions are above set forth, are material and necessary to a proper determination of the said cause in the caption set forth and described, and that the said witnesses are residents of Jackson county, Missouri. I further certify that a notice of the time and place of the taking of said depositions and the names of the witnesses to he examined, signed by Scarritt & Riggins and Botsford & Williams, attorneys for plaintiffs, was served on Bryant & Holmes and Tichenor & Warner, attorneys of record for defendants, on the 17th day of February, A. D. 1881, which said notice is returned herewith, marked Exhibit "A." And I further certify that I was attended at the law office of Botsford & Williams, 3d floor, northwest corner of 6th and Delaware streets, in Kansas City, State of Missouri, aforesaid, by Daniel B. Holmes, of the firm of Bryant & Holmes, aforesaid, as attorney for the defendants, and Botsford & Williams, as aforesaid, as attorneys for the plaintiffs, and the witnesses, to-wit: Lucius S. Cady, Charles S. Shepherd, O. P. W. Bailey, and Joseph M. Green, who were of sound mind and lawful age, and were by me sworn and examined and their examinations by me reduced to writing and subscribed by them in my presence on the day, between the hours, and at the place in that behalf first aforesaid. I do further certify that I am not of counsel nor attorney for either of the parties to the suit in controversy, or in any way interested in the event of said suit.

In testimony whereof, I have hereunto set my hand and official seal, this the 24th day of February, 1881.

JOSEPH S. RUST,
Notary Public.

[SEAL.]

Upon the back of these depositions appears the following: "251. Smith vs. Schwed. Filed March 28th, 1881. H. C. Geisberg, Clerk."

NOTICE TO TAKE DEPOSITIONS IN U. S. COURTS.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF MISSOURI, } ss.

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

WILLIAM SMITH, JOHN SMITH, O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE and GEORGE D BRIGGS,
Plaintiffs,
against
EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY,
Defendants.

You, the above named defendants, or Bryant & Holmes and Tichenor & Warner, your attorneys of record, are hereby notified that on the 3d day of March, A. D. 1881, the above named plaintiffs will, in the above entitled suit, at the office of Bowler & Burdick, jobbing jewelers, No. 208 Superior street, Cleveland, in the county of Cuyahoga, in the state of Ohio, take deposition of George W. Scribner, to be used as evidence on the said trial of said suit, and on the hearing of each and every motion and application therein. Said deposition will be taken because the testimony of said witness is necessary on the trial of said action, and said witness lives more than one hundred miles from the place of trial of said action, and said cause is a suit in equity; and that the taking of said deposition will be commenced at 9 o'clock a. m. of said day, and that the taking of the same will be adjourned and continued from day to day, Sundays accepted, at the same place until the same is completed.

Dated this 24th day of February, A. D. 1881.

SCARRITT & RIGGINS, and
BOTTSFORD & WILLIAMS,
Att'ys for Plaintiffs.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF MISSOURI, } ss.

James S. Botsford, being duly sworn, states that he delivered a true copy of the within notice to D. B. Holmes, Esq., of the within firm of Bryant & Holmes, as attorney of the within defendants, at Kansas City, in said district, on February, 24th, A. D. 1881.

JAMES S. BOTSFORD.

Sworn to and subscribed before me this February 24th, A. D. 1881.

WARREN WATSON,
Com'r U. S. Cir. Ct. West'n Dis't Mo.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION.

Be it remembered, that on this 3d day of March, A. D. 1881, I, James W. Stewart, a notary public in and for the county of Cuyahoga, state of Ohio, duly appointed, commissioned and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse*, in civil causes pending in the courts of the United States, cause to come before me, at room five, number 208 Superior street—to which room this taking of depositions was adjourned by the express agreement and consent of the attorneys of the respective parties, plaintiffs and defendants, as appear from said consent in writing hereto attached, marked exhibit "M." and made a part hereof—in the city of Cleveland, in the county of Cuyahoga, state of Ohio, between the hours of nine o'clock a. m., and nine o'clock p. m., of the said day, the following person, to-wit: George W. Scribner, to be examined as a witness in a cause pending in the Circuit Court of the United States, in and for the Western District of Missouri, Western Division, wherein William Smith, John Smith, O. C. Lenz, William C. Greene and B. W. Greene, and George D. Briggs are plaintiffs, and Edward Schwed, Simon H. Newhouse, Herman Heller and O. P. W. Bailey are defendants.

And the said George W. Scribner, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Q. What is your name, age, business and place of residence?

A. George W. Scribner; 23 years; traveling agent for Bowler & Burdick, wholesale jewelers, Cleveland, Ohio.

Q. State whether you are acquainted with the defendants, Schwed and Newhouse?

A. Yes; I am.

Q. Please state, if you know, about how long Schwed & Newhouse were carrying on business at Kansas City, Missouri?

A. About five months.

Q. During what period was said five months?

A. From August, 1879, to January, 1880.

Q. What time in August did the business commence and what time in January did it close?

A. About the 15th of August and the latter part of January, 1880.

Q. State what the business was that was carried on by Schwed & Newhouse, at Kansas City, during that time?

A. Wholesale jewelry.

Q. State whether you were employed by Schwed & Newhouse in their business, at Kansas City, and if so, in what capacity?

A. I was; as traveling agent.

Q. Please state when your employment began and when it ceased?

A. It began the 15th of August and ceased sometime in 1880; I don't know the exact latter date.

Q. Please state whether Schwed & Newhouse had any other traveling salesman than yourself during the time they were in business at Kansas City?

A. Not from the Kansas City house; I was the only salesman they had.

Q. Please state the amount of salary you received?

A. Eighty dollars per month.

Q. Please state about how many days you were engaged away from the house traveling for the firm?

A. In the neighborhood of a hundred.

Q. What was the average amount per day of your traveling expenses while you were away from the house as traveling agent?

Objected to by Mr. Cohen as irrelevant.

A. Four dollars and a half per day?

Q. Please state the territory within which you traveled and sold goods for Schwed & Newhouse?

Objected to by Mr. Cohen as immaterial.

A. Principally the state of Kansas.

Q. State the names of the places where you sold, so far as you can remember them?

Objected to by Mr. Cohen as incompetent.

A. Topeka, Newton, Wichita, Wellington, Winfield, Iola, Lawrence, Manhattan, Beloit, Minneapolis, Abilene, Concordia, Hutchinson, Russell, Ottawa, that is all I can think of at present.

Q. Were there other places where you sold that you do not remember?

A. There is.

Q. Please state whether the business at Kansas City was conducted by both Schwed & Newhouse?

A. It was conducted by Mr. Newhouse alone.

Q. Please state what person or persons, other than yourself, were employed by Schwed & Newhouse in their Kansas City business?

A. One boy, I do not know his name, as errand boy and packing clocks in the office and making himself generally useful.

Q. About how old was this boy?

A. About fifteen years.

Q. What compensation did this boy receive?

A. I think it was four dollars a week.

Q. Were this boy and yourself the only employes Schwed & Newhouse had in their Kansas City business?

A. Yes.

Q. Please state what rent per month was paid by Schwed & Newhouse for their place of business in Kansas City?

A. Fifty dollars a month.

Q. What books of account were kept by Schwed & Newhouse in their Kansas City business?

A. A journal, a cash-book and ledger; these are the only books I know of.

Q. Who made entries in and kept those books.

Objected to by Mr. Cohen as irrelevant.

A. Mr. Newhouse.

Q. Please state if you know the amount of goods sold by Schwed & Newhouse in their business at Kansas City prior to January first, 1880?

Objected to by Mr. Cohen as irrelevant.

A. About $12.000 worth of goods.

Q. Please state how and from what source you ascertained the amount of said sales?

A. From figures shown by Mr. Newhouse, taken from the ledger.

Q. When goods were received into the store of Schwed & Newhouse, at Kansas City, how much above their cost price were they marked for sale?

Objected to by Mr. Cohen as irrelevant.

A. About twenty-five per cent.

Q. Were the goods that were sold sold for twenty-five per cent above their cost price?

Objected to by Mr. Cohen as leading.

A. Goods that I sold for the house were.

Q. What proportion of the twelve thousand dollars worth of goods named above was sold by you?

A. About two-thirds.

Q. Pursuant to whose instructions did you sell at twenty-five per cent above cost?

A. Well, I sold goods from the selling mark which was put there by Mr. Newhouse.

Q. Do you know of Mr. Newhouse ever making a sale himself for less than the selling mark?

Objected to by Mr. Cohen as leading, irrelevant and incompetent.

A. I do not.

Q. During the time Schwed & Newhouse carried on business in Kansas City, was there any other wholesale jewelry establishment at that place?

A. Not to my knowledge.

Q. If there had been any other wholesale jewelry establishment would you not have been apt to know of it?

A. I think I would.

Q. Did any other jewelry house at Kansas City have a traveling salesman that you ever met in your travels for Schwed & Newhouse?

A. I never met any.

Q. Up to the time of the seizure of the stock of goods of Schwed & Newhouse at Kansas City, by the sheriff, and the closing of their business there, what loss, if any, was sustained by them?

Objected by Mr. Cohen, the question presuming facts not yet established by the witness.

A. One loss of about $3,300; goods sold to Loyd Hope, Winfield, Kansas. There might have been something realized out of that since.

Q. Was this the only loss sustained by Schwed & Newhouse, up to the time of the levy by the sheriff?

Objected by Mr. Cohen as irrelevant.

A. It was the only loss.

Q. Was an account of stock taken by Schwed & Newhouse, at Kansas City?

A. Not by Schwed & Newhouse, but was taken by Mr. Turner, of Kansas City, and myself, after the seizure of the stock.

Q. Do you know the amount of sales made by Schwed & Newhouse in January, 1880, prior to the levy of the sheriff?

Objected to by Mr. Cohen as irrelevant.

A. I do not.

Q. Please state the amount, if you know the amount of the value of the stock of Schwed & Newhouse, at Kansas City, at the cost price of the goods on hand at the time of the levy by the sheriff?

A. About $12,000.

Q. Please state the amount of the value of said stock at the prices marked by Schwed & Newhouse for sale at the time of said levy?

A. It was twenty-five per cent. added to $12,000, or about $15,000.

Q. Please state how you come to ascertain said values, and if you obtained the same at the request of any person, please state at whose request?

A. By an inventory taken of the stock after the levy by the sheriff, by request of Mr. Holmes, of the firm of Bryant & Holmes, attorneys, in Kansas City.

Q. Please state how many safes were kept by Schwed & Newhouse at their place of business at Kansas City?

A. One safe only.

Q. What kind of a safe was it?

A. An iron safe with a combination lock.

Q. Did you or the errand boy have the combination?

A. We did not.

Q. Prior to the levy of the sheriff was the safe locked each night and unlocked each morning while you were there?

A. It was.

Q. By whom?

A. By Mr. Newhouse.

Q. How long before the levy by the sheriff had you returned to the business house at Kansas City from your last trip?

A. About three weeks; I was at the store daily during this three weeks next prior to the levy.

Q. Did Mr. Newhouse open and close the safe each day during the said three weeks?

A. He did.

Q. Were you in the store when the sheriff levied the exection in in favor of H. Heller on the stock of goods of Schwed and Newhonse at Kansas City?

A. I came into the office about ten minutes after the sheriff had made the levy.

Q. About what hour of the day was it when the sheriff made the levy?

Objected to by Mr. Cohen, the record being the best evidence.

A. About ten o'clock in the morning.

Q. Had you received any information or intimation from any source, prior to the levy by the sheriff, that a levy was about to be made, or that Schwed & Newhouse were about to fail in business.

Objected to by Mr. Cohen as hearsay.

A. I had not.

Q. Had Schwed & Newhouse, during the time they were in business at Kansas City, done a good business or a losing business?

Objected to by Mr. Cohen as irrelevant.

A. They did a good business.

Q. State whether you were expecting the levy to be made or whether it took you by surprise?

A. It took me by surprise.

Q. Please state whether your employment ceased at the time of the levy by the sheriff or subsequently?

A. Subsequently.

Q. Did your employment cease before or after the goods were sold by the sheriff?

A. After the sale.

Q. Please state whether between the times of the levy by the sheriff and the sale of the goods anything was said to you by Mr. Newhouse about your staying in the employ of Schwed & Newhouse?

Objected to by Mr. Cohen as immaterial.

A. Mr. Newhouse told me to remain in Kansas City, as the business would continue there.

Q. Did Mr. Newhouse, between those times, say anything as to who would carry on the business after the sale; if so, please give what Mr. Newhouse said as fully as you can?

Objected to by Mr. Cohen for same reason as above.

A. Mr. Newhouse said that the business would go on in Kansas City, but did not say by whom.

Q. Was this stated to you at the same time that you were requested to remain and continue in the employ of Schwed & Newhouse?

A. It was.

Q. Had you been discharged by Mr. Newhouse prior to this request?

A. I had not.

Q Was this request to remain with Schwed & Newhouse and the statement that was made by Mr. Newhouse at the same time repeated by him?

A. It was, a number of times.

Q. Was the request or statement repeated after the sale of the goods by the sheriff?

Objected to by Mr. Cohen as leading and immaterial.

Same objection to 59th question.

A. No, it was before the sale.

Q. No business at the store was done by either Mr. Newhouse or yourself, was there, after the levy?

Objected to by Mr. Cohen, as above.

A. There was no goods sold, but money collected; the money was collected by me and handed to Mr. Newhouse.

Q. About how much money?

Objected to by Mr. Cohen for the same reason as 60th question.

A. About a hundred dollars in cash and two hundred dollars in notes.

Q. Please state about how many times these requests to remain in the employ of Schwed and Newhouse were repeated by Mr. Newhouse?

Q. Do you know the amount of sales made by Schwed & Newhouse in January, 1880, prior to the levy of the sheriff?

Objected to by Mr. Cohen as irrelevant.

A. I do not.

Q. Please state the amount, if you know the amount of the value of the stock of Schwed & Newhouse, at Kansas City, at the cost price of the goods on hand at the time of the levy by the sheriff?

A. About $12,000.

Q. Please state the amount of the value of said stock at the prices marked by Schwed & Newhouse for sale at the time of said levy?

A. It was twenty-five per cent. added to $12,000, or about $15,000.

Q. Please state how you come to ascertain said values, and if you obtained the same at the request of any person, please state at whose request?

A. By an inventory taken of the stock after the levy by the sheriff, by request of Mr. Holmes, of the firm of Bryant & Holmes, attorneys, in Kansas City.

Q. Please state how many safes were kept by Schwed & Newhouse at their place of business at Kansas City?

A. One safe only.

Q. What kind of a safe was it?

A. An iron safe with a combination lock.

Q. Did you or the errand boy have the combination?

A. We did not.

Q. Prior to the levy of the sheriff was the safe locked each night and unlocked each morning while you were there?

A. It was.

Q. By whom?

A. By Mr. Newhouse.

Q. How long before the levy by the sheriff had you returned to the business house at Kansas City from your last trip?

A. About three weeks; I was at the store daily during this three weeks next prior to the levy.

Q. Did Mr. Newhouse open and close the safe each day during the said three weeks?

A. He did.

Q. Were you in the store when the sheriff levied the exection in in favor of H. Heller on the stock of goods of Schwed and Newhonse at Kansas City?

A. I came into the office about ten minutes after the sheriff had made the levy.

Q. About what hour of the day was it when the sheriff made the levy?

Objected to by Mr. Cohen, the record being the best evidence.

A. About ten o'clock in the morning.

Q. Had you received any information or intimation from any source, prior to the levy by the sheriff, that a levy was about to be made, or that Schwed & Newhouse were about to fail in business.

Objected to by Mr. Cohen as hearsay.

A. I had not.

Q. Had Schwed & Newhouse, during the time they were in business at Kansas City, done a good business or a losing business?

Objected to by Mr. Cohen as irrelevant.

A. They did a good business.

Q. State whether you were expecting the levy to be made or whether it took you by surprise?

A. It took me by surprise.

Q. Please state whether your employment ceased at the time of the levy by the sheriff or subsequently?

A. Subsequently.

Q. Did your employment cease before or after the goods were sold by the sheriff?

A. After the sale.

Q. Please state whether between the times of the levy by the sheriff and the sale of the goods anything was said to you by Mr. Newhouse about your staying in the employ of Schwed & Newhouse?

Objected to by Mr. Cohen as immaterial.

A. Mr. Newhouse told me to remain in Kansas City, as the business would continue there.

Q. Did Mr. Newhouse, between those times, say anything as to who would carry on the business after the sale; if so, please give what Mr. Newhouse said as fully as you can?

Objected to by Mr. Cohen for same reason as above.

A. Mr. Newhouse said that the business would go on in Kansas City, but did not say by whom.

Q. Was this stated to you at the same time that you were requested to remain and continue in the employ of Schwed & Newhouse?

A. It was.

Q. Had you been discharged by Mr. Newhouse prior to this request?

A. I had not.

Q Was this request to remain with Schwed & Newhouse and the statement that was made by Mr. Newhouse at the same time repeated by him?

A. It was, a number of times.

Q. Was the request or statement repeated after the sale of the goods by the sheriff?

Objected to by Mr. Cohen as leading and immaterial.

Same objection to 59th question.

A. No, it was before the sale.

Q. No business at the store was done by either Mr. Newhouse or yourself, was there, after the levy?

Objected to by Mr. Cohen, as above.

A. There was no goods sold, but money collected; the money was collected by me and handed to Mr. Newhouse.

Q. About how much money?

Objected to by Mr. Cohen for the same reason as 60th question.

A. About a hundred dollars in cash and two hundred dollars in notes.

Q. Please state about how many times these requests to remain in the employ of Schwed and Newhouse were repeated by Mr. Newhouse?

Objected to by Mr. Cohen as above.

A. About ten or twelve.

Q. Please give the language as nearly as you can recollect it in making these requests, and what reasons, if any, he gave for requesting you to remain?

Objected to by Mr. Cohen, as cumulative, immaterial and irrelevant.

A. After the levy on the stock Mr. Newhouse told me not to leave Kansas City, as the business would go on after this affair was over the same as before. These are his words, as near as I can recollect them.

Q. Do you remember how long the sale was after the levy?

Objected to by Mr. Cohen because the record of the proceedings is the best evidence.

A. I believe it was about three weeks.

Q. Did you leave Kansas City before or after the sale of the stock of goods by the sheriff?

A. After.

Q. About how long after?

A. About one week.

Q. How did you come to leave Kansas City at that time?

Objected to by Mr. Cohen as immaterial.

A. On receiving a letter from Mr. Newhouse, written from Pittsburgh.

Q. What became of that letter?

Objected to by Mr. Cohen as leading, the proper question being, where is that letter?

A. The letter was destroyed, I think, with other letters that I destroyed.

Q. Please state what Mr. Newhouse said in that letter?

Objected to by Mr. Cohen because it has not yet been proven absolutely that the letter is lost or destroyed, or that the witness has looked for it in places where it probably could be found.

A. Mr. Newhouse said in that letter that he was sorry to dispense with my servicees at the Kansas City house, as the affairs were in such a shape they could not go on with their business there. He also sent me one hundred dollars, which was part due me on salary, in the same letter.

Q. Up to what time was your salary paid you?

A. Up to the time I received that letter, which was about the middle of February or some part of February, a few days after the sale.

Q. Did that one hundred dollars pay you up in full?

A. It did not.

Q. Were you afterwards paid in full, and if so when, where, and in what amount.

Objected to by Mr. Cohen as irrelevant.

A. I was; about one week after the sale by the sheriff at Kansas City, I received a draft for $171 in full.

Q. Please state about how long after the sale by the sheriff before the first letter of Mr. Newhouse to you was written?

A. About the time of the sale; I cannot tell exactly.

Q. Were you acquainted with the hand-writing of Mr. Newhouse, and if so, was said letter written in his hand-writing?

A. It was; it was in Mr. Newhouse's hand-writing.

Q. How long aftar the latter letter, containing the remittance of $171, did you remain in Kansas City?

Objected to by Mr. Cohen as irrelevant.

A. Only a few days.

Q. By whom have you been employed since you left Kansas City?

A By Bowler & Burdick, Cleveland.

CROSS-EXAMINATION BY MR. COHEN.

Q. Had you access to the books of Schwed & Newhouse as kept by Mr. Newhouse at Kansas City?

A. I had.

Q. Did you avail yourself of that privilege?

A. I did.

Q. Did you make any entries in any of these books?

A. I did not.

Q. What did you do with the inventory of stock of Schwed & Newhouse when taken by you after the levy by the sheriff?

A. Gave it to Mr. Holmes, of Bryant & Holmes.

Q. How long ago was that?

A. About one week before the sale by the sheriff.

Q. Did not that inventory amount to nearly fourteen thousand dollars?

A. As near as I can recollect, it amounted to twelve thousand dollars. The figures of the inventory are in a book, with Mr. Turner's and my name signed on each page and under the footings. It may be fourteen thousand.

Q. Who is Mr. Turner?

A. A retail jeweler in Kansas City.

Q Was the twenty-five per cent. added to the cost of the goods in accordance with the usual way of marking such goods?

A. It was; the cost mark was also on the goods with the selling mark.

Q. I mean, was that the ordinary selling price on wholesale jewelry at that time?

A. By some houses it is; others add thirty-three and one-third per-cent. and others fifty per cent.

Q. Did the method of doing business by Schwed & Newhouse differ from that used ordinarily by wholesale jewelers?

A. It did not.

Q. Was there anything hidden from you in the matter of the management of this business?

A. I knew nothing at all of the business of the house. I only sold goods for them.

Q. Were you ever refused any information?

A. I never was; I never asked any.

Q. What in your judgment was the prospect of success of this firm of Schwed & Newhouse, provided they had not been sold out, and had gone on in business?

A. It was good.

Q. Did the fact that there were no other wholesale jewelers in Kansas City open out a good field for such business?
A. I did.

GEORGE W. SCRIBNER.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

JAMES W. STEWART,
[SEAL.] Notary Public.

UNITED STATES OF AMERICA,)
WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION. } ss.

I, Jamas W. Stewart a notary public in and for the county of Cuyohoga and state of Ohio, duly commissioned, qualified and acting as such under and by virtue of the several acts of congress, authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in circuit and district courts of the United States, do hereby certify that the witness whose deposition is above set forth, was material and necessary to the proper determination of the cause in the caption set forth and described, and that the said witness is a resident of the city of Cleveland, in the county of Cuyahoga and state of Ohio, the same being at a greater distance than one hundred miles from the City of Kansas, state of Missouri.

I further certify that a notice of the time and place of taking said depositions and the name of the witness to be examined, signed by Scarritt & Riggins and Botsford & Williams, attorneys for plaintiffs, was served on Bryant & Holmes, attorneys for defendants, on the 24th day of February, A. D. 1881, which said notice is returned herewith, marked exhibit "A." And I further certify that I was attend at the office of Bowler & Burdick, room number 2, number 208 Superior street, Cleveland, Ohio, and also at room number 5, number 208 Superior street, Cleveland, Ohio, to which place the taking of these depositions was adjourned by the consent of all parties, as appears from exhibit "M." hereto attached, by James S. Botsford, attorney for plaintiffs, Josiah Cohen, attorney for defendants, and the witnesses, to-wit: George W. Scribner, who is of sound mind and lawful age, and he was by me sworn and examined, and his examination by me reduced to writing, and subscribed by him in my presence, on the day, between the hours, and at the place, in that behalf first aforesaid. I do further certify that I am not of counsel nor attorney for either of the parties to the suit in controversy, or in any way interested in the event of said suit.

In testimony whereof, I have hereunto set my hand and seal, this 3d day of March, A. D. 1881.

JAMES M. STEWART,
[SEAL.] Notary Public.

Attached to this affidavit is the certificate of the county clerk of Cuyahoga county, Ohio, certifying that James W. Stewart was a notary public in and for said county at the date thereof.

Tax witness fee $1.50, paid by plaintiffs.
Tax notary public fee, $5.50, paid by plaintiffs.

EXHIBIT "M."

And now, to-wit, on the third day of March, 1881, personally come

James S. Botsford, attorney for plaintiffs, and Josiah Cohen, attorney for defendants and each separately, on behalf of their respective clients, waived the taking of these depositions in accordance with the annexed notice in the office of Merssrs. Bowler & Bowdick, room No. 2, No. 208 Superior street, Cleveland, Ohio, and by consent adjourned the taking of the same to the office of James W. Stewart, room 5, same street and number.

JAMES S. BOTSFORD.
Attorney for Plaintiffs.

JAMES COHEN,
Atty. for Defendants.

NOTICE TO TAKE DEPOSITIONS IN U. S. COURTS.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF MISSOURI, } ss.

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

WILLIAM SMITH, JOHN SMITH, O. C. LENZ, WILLIAM C. GREENE, B. W. GREENE and GEORGE D BRIGGS,
Plaintiffs,
against

EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER and O. P. W. BAILEY,
Defendants.

You, the above named plaintiffs, or Botsford & Williams, your attorneys of record, are hereby notified, that on Wednesday, the 20th day of April, A. D. 1881, the above named Herman Heller and O. P. W. Bailey, will in the above entitled suit, at the law office of Mayer Sulzberger, Esq., corner of sixth and Chestnut streets, in the city of Philadelphia, in the county of Philadelphia, in the state of Pennsylvania, take depositions of Henry Lewis, Lemuel Coffin and J. W. Moffley to be used as evidence on the trial of said suit, and on the hearing of each and every motion and application therein. Said depositions will be taken because the testimony of said witnesses is necessary on the trial of said action, and said witnesses live more than one hundred miles from the place of trial of said action, and that the taking of said deposition will be commenced at 9 o'clock a. m. of said day, and that the taking of the same will be adjourned and continued from day to day, Sundays accepted, at the same place until the taking of same is completed.

Dated this 14th day of April, A. D. 1881.

BRYANT & HOLMES, and
TICHENOR & WARNER,
Attorneys for Herman Heller and O. P. W. Bailay.

Service of the above notice is hereby accepted, and issue of dedimus, filing of interrogatories, and all exceptions as to time are hereby waived, this 14th day of April, 1881.

SCARRITT & RIGGINS, and
BOTSFORD & WILLIAMS,
Att'ys of Record for Plaintiffs.

Depositions of sundry witnesses taken before me, Benjamin F. Teller,

a notary public in and for the State of Pennsylvania, residing in the city of Philadelphia, on the twentieth day of April, 1881, between the hours of 9 o'clock a. m. and 5 p. m., at the law office of Mayer Sulzberger Esq., corner of sixth and Chesnut streets, in the said city of Philadelphia, pursuant to the annexed notice, to be read in evidence on behalf of the defendants in an action pending in the Circuit Court of the United States for the Western District of Missouri, Western Division, in which William Smith and others are plaintiffs, and Edward Schwed and others are defendants.

Wednesday, April 20th, 1881, 9 a. m.

Present, Mayer Sulzberger Esq., Herman Heller, Lemuel Coffin and Henry Lewis.

Lemuel Coffin, of the city of Philadelphia, being duly sworn according to law doth depose and say:

"I know Herman Heller very well; his business is manufacturer and dealer in ladies' wear and handkerchiefs, on Market street, above Third, in the city of Philadelphia. I am a dry goods commission merchant, the senior member of the firm of Coffin, Artemus & Co., of this city and New York, with branch offices in Boston and Baltimore. I have been in business in this city about twenty years; or more. I have known Herman Heller about five or six years. I think his reputation and standing is very good amongst our leading houses; his credit is excellent; he is reputed to be a man of means; we esteem him ourselves, and think he is so by others, as a man of integrity and truthfulness, and a very good merchant.

"LEM'L. COFFIN."

Sworn and subscribed before me, this 20th day of April, 1881.
[SEAL.] BENJ. F. TELLER, Notary Public.

[Form 25 B.]

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

I, William B. Mann, prothonotary at the court of common pleas of said county, do certify that Benj. F. Teller, Esquire, before whom the annexed affidavits were made, was, at the time of so doing, a notary public duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments, &c., and to all whose acts, as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, said court being a court of record; and that I am well acquainted with the hand-writing of the said Benj. F. Teller, notary public, and verily believe his signature thereto is genuine, and that said affidavit purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, this 28th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

WILLIAM B. MANN, Prothonotary.

Objected to as irrelevant and incompetent by plaintiffs.

Henry Lewis, of the city of Philapelphia, being duly affirmed according to law, doth depose and say:

"I live in Philadelphia; I am a dry goods merchant, of the firm of Lewis Bros. & Co., of Philadelphia, New York, Chicago, Boston and Baltimore. I know Herman Heller; he is a merchant and manufacturer, on Market street, in the city of Philedelphia; I have known him for ten years;

his standing and credit as a merchant, has been and is very good, both for integrity and means. We have given Mr. Heller a line of credit that we give a very few. "HENRY LEWIS."

Sworn and subscribed before me this 20th day of April, 1881.
[SEAL.] BENJ. F. TELLER, Notary Public.

Adjourned to Thursday morning 9 a. m., on account of the sickness of John W. Moffley.

Thursday morning April 21st, 1881, adjourned to Friday morning next, at the same hour, on account of the sickness of John W. Moffley.

Objected to as irrelevant and incompetent by plaintiffs.

Friday morning, April 22nd, 1881.

Present Mayer Sulzberger, Esq., Herman Heller and witness.

John W. Moffley being duly affirmed according to law, deposes and says:

"I am the president of the Manufacturer's National Bank, of Philadelphia and have been for about five years. I know Herman Heller; I knew him since 1870, or thereabouts; I know his credit and standing as a merchant; it has been and is good since I have known him; I consider his credit first-class—good for all his wants in business; his reputation is the he is a man of large means; his character has always been good for integrity; his reputation as a business man is good.

"JOHN W. MOFFLEY."

Affirmed and subscribed before me, this 22d day of April, 1881.
[SEAL.] BENJ. F. TELLER, Notary Public.

I, Benjamin F. Teller, a notary Public in and for the commonwealth of Pennsylvania, residing in the city of Philadelphia, do hereby certify that Henry Lewis, Lemuel Coffin and John W. Moffley, were by me first severally sworn or affirmed to testify the truth, the whole truth and nothing but the truth, and that the depositions by them respectively subscribed as above set forth, were reduced to writing by myself, in the witnesses' presence, and were respectively subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit; and the said deposition specified and continued by adjournment from day to day as above stated.

In witness whereof I have hereunto set my hand and seal, this 22d day of April. 1881.

BENJ. F. TELLER, Notary Public.

William Smith, Jr., of lawful age, being sworn and examined on the part of the plaintiffs, deposeth and saith: I am engaged as a clerk for Wm. Smith & Co., manufacturing jewelers, of 25 Maiden Lane, in the city of New York. I am the son of William Smith, of the firm of Wm. Smith & Co., and have been engaged as the general salesman and confidential manager for about ten years. I am personally acquainted with Messrs. Schwed & Newhouse, two of the defendants in this action, and have known them about six years. They have been customers of ours, purchasing goods from us during the past five years, and there is now due and owing our firm from Schwed & Newhouse the sum of thirty-eight hundred and twenty-nine dollars and seventy-one cents for goods sold and

delivered to them. The purchases were made by them as follows (witness refers to itemized bill): On November 1, 1878, they (Schwed & Newhouse) ordered goods by mail amounting to $3.03; on November 22, 1878, Mr. Newhouse personally ordered goods amounting to $582.40; also November 27th, 1878, $232.75; on the 5th of December, 1878, we received an order by mail from Schwed & Newhouse, Pittsburgh, Pa., for goods amounting to $27.05, (paper shown witness) this is the order we received; paper marked exhibit "H," and annexed to deposition; on the 18th of December, 1878, we sold to Schwed & Newhouse $15.30, ordered by telegraph; (paper shown witness) this is the order we received by telegraph for goods last mentioned; paper marked exhibit "I." and annexed to deposition; on the 8th of March, 1879, we sold to Schwed & Newhouse, goods amounting to $17.98, also on the 21st of March, 1879, goods amounting to $38.62; on March 26th, 1879, goods amounting to $9.75; April 9th, 1879, goods amounting to $1.75; June 30th, 1879, goods amounting to $57.43. All of these goods above testified to were shipped to Schwed & Newhouse at Pittsburgh, Pa. On July 28th, 1879, Mr. S. H. Newhouse called at our place of business and purchased goods amounting to $30.89, which were delivered to him personally on that day; on the 15th of August, 1879, Mr. S. H. Newhouse called at our place of business and personally ordered goods amounting to $373.28 for the Pittsburgh, Pa., house and directed that they should be delivered to Lussfeld, Lorsch & Co., of No. 13 Maiden Lane, N. Y. City, and the goods were delivered to said firm; on the same day Mr. S. H. Newhouse also ordered another bill of goods amounting to $1,794.46, and directed them to be held subject to their order, for a few days. We subsequently received a postal card directing us to send the said goods to Kansas City, Mo., (card shown witness) this is the postal card referred to; card marked Exhibit "J," and annexed to deposition. This card is in the hand-writing of Edward Schwed. On November 3, 1872, Schwed & Newhouse ordered goods for selection to be sent to Kansas City, Mo., and we sent them a package by express, and on or about November 11, 1879, we received a postal card from Schwed & Newhouse, and also a portion of the goods which we had formerly shipped to them. (Card shown witness.) This is the card referred to and marked Exhibit "K," and annexed to deposition. The goods retained by Schwed & Newhouse, referred to in Exhibit "K," amounted to $52.22. All the goods were sold on credit of four months. (Paper shown witness.) This paper is a correct list of all goods sold and delivered by Wm. Smith & Co. to Schwed & Newhouse, and shows each article sold to them and the price of each; paper marked Exhibit "L," and annexed to deposition. There has been paid on account of these goods the sum of $204.50, leaving a balance still due and owing to Wm. Smith & Co. of the sum of $3,829.71, and this is the sum claimed in this suit. On or about the 28th day of July, 1879, at the city of New York, S. H. Newhouse stated in my presence that the firm of Schwed & Newhouse were about to open a branch store at Kansas City, Mo. (Paper shown witness.) This is a copy compared by me with the original of a certain circular received by Wm. Smith & Co. by mail from Schwed & Newhouse; paper marked Exhibit "M," and annexed to deposition. I am familiar with the hand-writing of Mr. S. H. Newhouse. Exhibits "A," "B" and "K", now shown to me are in the hand-writing of S. H. Newhouse. I am also familiar with Mr. Edward Schwed's hand-writing. Exhibits "J" and "G," now shown me, are in the hand-writing of Edward Schwed.

WM. SMITH, JR.

I, Joseph C. Wolff, a Notary Public in and for New York City and County, do hereby certify that Wm. Smith, Jr., the deponent, whose place of residence is the City, County, and State of New York, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed by him in my presence on the 1st day of July, 1880, at the City of New York, in the County and State of New York.

[SEAL] JOS C. WOLFF,
Notary Public in and for New York City and County.

Not being able to complete the taking of said depositions by reason of not being able to procure the further attendance of witnesses, I adjourn the further taking of the same until to-morrow (the 2d day of July, 1880), then to be continued at the same place and between the same hours mentioned in the annexed notice.

[SEAL] JOS. C. WOLFF,
Notary Public in and for New York City and County.

Pursuant to the adjournment as above stated, on the 2d day of July, 1880, between the hours of 12 M. and 3 P. M., at the City of New York, I continued the taking of said depositions as follows:—

Charles S. Shepherd, of lawful age, being sworn and examined on the part of the plaintiffs, deposeth and saith:

I am a traveling salesman in the employ of Wm. Smith & Co., plaintiffs in this action. I am acquainted personally with Edward Schwed and Simon H. Newhouse, composing the firm of Schwed & Newhouse. On October 7, 1879, I personally sold and delivered to Schwed & Newhouse at Kansas City, Mo., for Wm. Smith & Co., a bill of goods amounting to $327,-65. These goods were delivered to Simon H. Newhouse at the store of Schwed & Newhouse, in Kansas City, Mo. On the same day and at the same place, Mr. Newhouse ordered another bill of goods for his firm, which I did not have with me; and subsequently and on or about the 10th of Oct., 1879, I shipped by express from Davenport, Iowa, to Schwed & Newhouse, at Kansas City, Mo., a bill of goods to fill this last order amounting to $166 62. On Oct. 25, 1879, I sold to Edward Schwed for the firm of Schwed & Newhouse, at Pittsburgh, Pennsylvania, a bill of goods amounting to one hundred and eighty-three dollars and sixty cents, and delivered them to him personally for said firm and at the same time and place I also received an order from him for goods amounting to $124.43, to be sent to his firm, said Schwed & Newhouse, at Pittsburgh, Pa., and thereafter and on Oct. 27, 1879, these goods were shipped by express to said Schwed & Newhouse. These goods were all sold on four months' credit by me for said firm of Wm. Smith & Co. These four bills of goods sold by me appear on "Exhibit L." (July 1, 1880), under the dates to which I have testified above. I know that Schwed & Newhouse, of Kansas City, Mo., who were in the jewelry business then, and the same business in Pittsburgh, Pa., on the corner of 5th ave. and Wood st. Mr. Simon H. Newhouse personally directed me to send duplicate bills to Schwed & Newhouse, at Pittsburgh, Pa., of all goods delivered by me to Schwed & Newhouse, at Kansas City, Mo., and I did so. Edward Schwed and Simon H. Newhouse are both residents of Pittsburgh, Pa., and have been so residing there for the past three or four years; but Mr. Simon H. Newhouse was temporarily absent from Pittsburgh, Pa , for a few months.

C S. SHEPHERD.

I, Joseph C. Wolff, a Notary Public in and for New York City and

County, do hereby certify that Charles S. Shepherd, the deponent, whose place of residence is the City of New York, County and State of New York, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed in my presence on the second day of July, 1880, between the hours of 12 M. and 1 P. M., in the City of New York, County and State of New York.

JOSEPH C. WOLFF,
Notary Public for New York City and County.

Clarence I Rupp, of lawful age, being sworn and examined on the part of plaintiffs, deposeth and saith: I am in the employ of Wm. Smith & Co., plaintiffs in this action, and have been for the past three years. I attend to shipping goods for the firm. ("Exhibit L" shown the witness.) I, on the fifth day of December, 1878, shipped by express to Schwed & Newhouse, Pittsburgh, Pa., the bill of goods which appears on this exhibit under that date. I also shipped by express to said firm the bill of goods which appears on this exhibit under date of March 8, 1879; these also went to Pittsburgh, Pa. I also shipped by express to said firm at Pittsburgh, Pa., the bills of goods which appear on this exhibit under dates of March 26, 1879, April 9, 1879, January 30, 1879, and October 27, 1879. I also shipped by express to said firm at Kansas City, Mo., the bill of goods which appears on this exhibit under date of August 15, 1879, amounting to $1,794.46.

CLARENCE I. RUPP.

I, Joseph C. Wolff, a Notary Public in and for New York City and County, do hereby certify that Clarence I. Rupp, the deponent, whose place of residence is the City of New York, in the County and State of New York, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed by him in my presence on the 2d day of July, 1880, between the hours of 12 M. and 1 P. M., in the City, County, and State of New York.

[SEAL]

JOS. C. WOLFF,
Notary Public in and for New York City and County.

David N. Smith, of lawful age, being sworn and examined on the part of the plaintiffs, deposeth and saith: I am in the employ of Wm. Smith & Co., and have been in their employ about ten years. I am a salesman and also attend to shipping of goods. On November 22, 1878, and August 15, 1879, I delivered, personally, to Sussfield, Lorsch & Co., of 13, Maiden Lane, New York City, the goods which are charged on "Exhibit L.," now shown me, under those dates; and on November 1, 1878, I also delivered to Jas. Fahys, of No. 9, Maiden Lane, New York City, the goods which are charged on "Exhibit L.," now shown me, under that date; these goods were all delivered to said firms to be packed with other goods ordered by said firm to be sent to them (the said Schwed & Newhouse).

DAVID. N. SMITH.

I, Joseph C. Wolff, a Notary Public in and for New York City and County, do hereby certify that David N. Smith, the deponent, whose place of residence is the City, County, and State of New York, was by me sworn to testify the whole truth of his knowledge touching the matters in controversy n the cause aforesaid, and that this deposition was reduced to writing and ubscribed by him in my presence on the 2d day of July, 1880, between

the hours of 1 P. M. and 12 P. M., in the City of New York, County and State of New York.

[SEAL] JOS. C. WOLFF,
Notary Public in and for New York City and County.

"EXHIBIT A," JULY 1, 1880.

KANSAS CITY, Sept. 1, 1879.

GENTS.:—Please send us selection, care of Sussfeld, Lorsch & Co., 13 Maiden Lane, a small line of your coral wire leaf goods, and oblige

Yours &c., SCHWED & NEWHOUSE.

Postmarked "Kansas City, Mo., Sept. 12, 5 P. M." Addressed, "Mess. Wm. C. Greene & Co., Providence, R. I."

"EXHIBIT B.," JULY 1, 1880.

KANSAS CITY, MO., Sept. 27, '79.

GENTS.:—By to-day's express we return such of the mem. goods as did not suit. Please send corrected bill, as also duplicate, to Pittsburgh, for those kept; also please deliver package to Vaughan Merrill, and oblige

Yours &c.,
SCHWED & NEWHOUSE.

Postmarked "Kansas City, Mo., Sept. 27, 5 P. M." Addressed, "Wm. C. Greene & Co., Providence, R. I."

"EXHIBIT C.," JULY 1, 1880.

EARLE & PREW'S EXPRESS.

Eastern, western, and northern express forwarders.

(Domestic Bill of Lading.)

PROVIDENCE, Sept. 25, 1879.

Received of Wm. C. Greene & Co.,
Pkg. Value
For which this Company charges

SCHWED & NEWHOUSE,
Pittsburgh, Pa.

Which it is mutually agreed is to be forwarded to our agency nearest or most convenient to destination only, and there to be delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed that the said Express Company are forwarders only and are not to be held liable or responsible for any loss or damage to said property while being conveyed by the carriers to whom the same may be by said Express Company intrusted, or arising from the danger of railroads, ocean or river navigation, steam, fire in stores, depots, or in transit, leakage, breakage, or from any cause whatever, unless in every case the same be proved to have occurred from the fraud or gross negligence of said Express Company or their servants; nor in any event shall the holder thereof demand beyond the sum of *Fifty Dollars*, at which the articles forwarded are hereby valued, unless otherwise herein expressed, or unless specially insured by them, and so specified in this receipt, which insurance shall constitute the limit of the liability of the Earle & Prew's Express. And if the same is intrusted or delivered to any other express company or agent (which said Earle & Prew's Express are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and as such alone liable, and the Earle & Prew's Express shall not be, in any event, responsible for the negligence or non-performance of any such company or person; and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend and inure to the benefit of each and every company or person to whom the Earle &

Prew's Express may intrust or deliver the above described property for transportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Earle & Prew's Express be liable for any loss or damage, unless the claim therefor shall be presented to them in writing at this office, within thirty days after; this company shall not be held responsible for any injury by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation. It is further agreed that said company shall not in any event be liable for any loss, damage or detention, caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection or riot, or the danger incident to a time of war, or by any riotous or armed assemblage. If any sum of money, besides the charge for transportation, is to be collected from the consignee on delivery of the above described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that this company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property, while in its possession for the purpose of making such collection, shall be that of warehousemen only.

Freight paid, 30 ct.

For EARLE & PREW'S EXPRESS,
CROWELL.

"EXHIBIT D.," JULY 1, 1880.

EARLE AND PREW'S EXPRESS.

Eastern, western, and northern express forwarders.

(Domestic Bill of Lading.) PROVIDENCE, Nov. 24, 1879.

Received of Wm. C. Greene & Co.,

Pkg.— Value—

For which the Company charges Schwed & Newhouse,

Pittsburgh, Pa.

(Marked Duplicate)

(And containing the same printed conditions as are copied in "Exhibit C.")

Freight paid, 30 ct.

For EARLE & PREW'S EXPRESS,
CROWELL.

"EXHIBIT E.," JULY 1, 1880.

SCHWED AND NEWHOUSE,

1879. To Wm. C. Greene & Co., Dr.

Aug. 12.	½ doz.	each, 6 7½ 9 / 12 o, 1, 2,	$	11 25
	⅔ "	32 / 15		8 00
	¼ "	28 C. W. Pins.		7 50
	¼ "	each, 1436, 33 1430 31½ Leaf Sets..		16 12
	¼ "	" 1427, 13½ 1428 12 " Crosses.		6 37
	¼ "	" 1350, 42 1315, 36 1289, 49½ Leaf Sets...		31 88
	½ "	" 1302, 10½ 1464, 7½ Leaf Scarf Pins		9 00
	¼ "	1346 / 22½		5 63

¼ " 15 1438 Knobs		7 50
¼ " 15 1425 Pins		3 75
¼ " 7½ 9 7½ 7½ 883, 1225, 1288, 1291, Scarf Pins		7 88
½ " 7½ 9 9 12 XX, 29, OOX, O, C. W. Knobs		18 75
¼ " 72 12 1325, 1251, Scarf Sets, But Pink		28 50
½ " 30 1319 Scarf Pin		15 00
¼ " 12 12 13½ 15 16½ 565, 566, 659, 660, 661		17 25
¼ " 15 13½ 16½ 786, 785 1153 Knobs		11 25
¼ " 15 21 22½ 555, 556, 957, Pearl Fctd. Knobs		14 63
½ " 18 898, Sc. Knobs, Pink		9 00
½ " 36 36 1330, 1282 Knobs, Pink Sc.		36 00
3 Set each, 4 4½ 1281, 1329, Sc. Pink		37 50
1 doz. " 3 3½ 466, 467 O. F. Pins		8 50
2 " " 570, 470, Studs		13 00
2 " 1342, C. Buts		18 00
1 355, Baby and Darling Pins		10 50
		$352 76
	⅓	117 58
Pittsburgh.		$235 18

1879.

Aug. 12, 1 doz. 355, Baby and Darling Pins		$ 10 50
2 " 9 1342, C. But		18 00
3 " 9 560		27 00
1 " 91		7 00
2 " 4 466, O. F. Pins		8 00
1 " 467		4 50
2 " each, 3½ 3½ 3 470, 568, 570, Studs		20 00
½ " " 36 36 1282, 1330, S. C. Knobs, Pink		36 00
3 set each, 6 6½ 1281, 1329, S. C., Pink		37 50
¼ doz. each, 21 22½ 556, 957, Pearl, 33 1165, Drops		19 12
½ " 18 898, S. C. Drops, Pink		9 00
⅓ " 72 1319 S. C. Pins, Pink		10 00
⅓ " 72 1325, S. C. S. But		24 00
¼ " 84 1082, " "		21 00
½ " each, 7½ 9 12 12 9 10½ XX, OOX, O, 3, 29, 701		30 00
½ " " 10½ 13½ 673, 679, Knobs		12 00

½	"	"	883, 1225, C. W. Scf. Pins	8 25
½	"	"	1291, 1288, " Rings	7 50
½	"		1438	7 50
¼	"		1346, Knobs	5 62
½	"	each,	1302, 1464, Scf. Pins	9 00
1/6	"	"	1271, 1350, 1298, 1289, Sets	27 75
¼	"	"	1427, 1428, Leaf Crosses	6 37
½	"	"	OX, O, 1, 2, 28	21 00
⅔	"		32, C. W. Pins	8 00
				$394 61
			⅓	131 53
	Kansas City.			$263 08

1879.

Sept. 16	1/6	doz. each,	1337, 1332, 1462, 1315	25 25
	1/6	" "	1375, 1348, 1436, 1298	23 00
	1/6	"	1433, Sets	5 00
	1/6	" each,	1362, 1338, 1414, 1345	9 75
	1/6	" "	1408, 1429, 1474, 1377	9 75
	1/6	" "	1422, 1401, 1302, 1469	6 50
	1/6	"	1376, Pins	75
	1/6	" each,	1483, 1296, 1367, 1381	8 25
	1/6	" "	1290, 1370, 1484, 1454	9 50
	1/6	"	1310, Knobs	1 50
				$ 99 25
			⅓	33 08
	Kansas City.			$ 66 17

Sept. 25.	½	doz. each,	1485, 1489	20 25
	⅓	" "	1498, 1436, Sets	20 00
	½	" "	1346, 1290, Drops	18 00
	¼	" "	1416, 1413	7 12
	½	"	1499, Pins	5 25
	¼	"	1479, S. But	18 75
	½	"	555, 556, 898, 1282	45 00

½	"	36 1330, Knobs		18 00
⅓	"	13½ 9 each, 7, End, 6 Engd. Pins		7 50
6	Set	1281, Sc. ⅔ Pink		36 00
3	"	1329, " "		19 50
				$215 37
			⅓	71 79
				143 58
		Pittsburgh.		$708 01

1879.

Nov. 24.	½	doz	each	45 24 30 22½ 1500, 1409, 1457, 1485	60 75
	¼	"	"	30 25½ 33 1433, 1348, 1436, Sets.	22 12
	½	"	"	13½ 12 1427, 1428, Crosses	12 75
	¼	"		24 1494	6 00
	½	"		10½ 1499, Pins	5 25
	1	"	"	13½ 9 1290, 1310	22 50
	½	"	"	10½ 15 12 1505, 1465, 1466, Knobs	18 75
	½	"		42 1251	21 00
	¼	"	"	72 90 54 42 1325, 1278, 1382, 1506, Sold . . .	72 00
	¼	"	"	78 84 1510, 1082, S. Belt	40 50
	1	"		15 21 13½ 15 898, Sc. Knobs	18 00
	½	"		16½ 24 555, 556, 785, 786	32 25
	½	"	"	36 36 36 1153, 1371, Knobs	20 25
	¼	"	"	9 12 1282, 1284, 1330, Knobs, Sc. .	27 00
	⅓	"	"	10½ 6, 7, Eng'd Pins	7 00
	2	"		6½ 355, Baby and Darling Pins	21 00
	3	set,		30 45 48 1329, Sc.	19 50
	¼	doz.	"	1319, 1083, 1502, Scf. Pins	30 75
					$457 37
				⅓	152 45
					304 92
					$1,012 93

" Exhibit F.," JULY 1, 1880.

EARLE & PREW'S EXPRESS.

Eastern, western, and northern express forwarders.
(Domestic Bill of Lading)

PROVIDENCE, Aug. 12, 1879.

Received of Potter & Buffington,
Pkg.— Value—
For which this company charges Schwed & Newhouse,
Pittsburgh.

(The above receipt is marked "duplicate," and contains the printed contract and conditions as copied in "Exhibit C.")

Freight—

For EARLE & PREW'S EXPRESS,
HALLETT.

"EXHIBIT G.," JULY 1, 1880."

PITTSBURGH, Aug. 8, 1879.

Gents.:—Please send our Pittsburgh order to Potter & Buffington on receipt of this, and oblige

Yours &c., SCHWED & NEWHOUSE.

Addressed, "Messrs. Wm. C. Greene & Co.,
PROVIDENCE, R. I."

Postmarked, PITTSBURGH, PA., Aug. 8, 3 P. M.

"EXHIBIT H.," JULY 1, 1880.

PITTSBURGH, Dec. 4, 1878.

MESSRS. WM. SMITH & CO.,

GENTS.:—We have an order for a 10 Ks. Guard Wire patent frame, 15 to 17 dwt.; but as we don't think you have them as light as that, you will please send us an approval, 1 each, with and without slide, *the lightest you have*, and oblige

Yours truly, SCHWED & NEWHOUSE.

"EXHIBIT I.," JULY 1, 1880.

(Telegram) No. 125.

Dated Pittsburgh, Pa., 18.

To WILLIAM SMITH & CO.,
25, Maiden Lane, N. Y.

Send fourteen (14) Karat instead.

SCHWED & NEWHOUSE.

5, Paid.
Bst.

Rec'd at Western Union Building, Broadway & Dey Street,
Dec. 18, 1878.

"EXHIBIT J," JULY 1, 1880.

PITTSBURGH, Aug. 16, 1879.

Gents:—Please ship goods by Amer. Express to 520 Delaware St., Kansas City, and put the value on box, and oblige

Yours truly,
SCHWED & NEWHOUSE.

Schwed & Newhouse. 16.

Addressed, "Messrs. Wm. Smith & Co., 25 Maiden Lane, New York." Postmarked "Pittsburgh, Pa., Aug. 16."

"EXHIBIT K," JULY 1, 1880.

KANSAS CITY, MO., Nov. 7, '79.

Gents :—We return by to-day's U. S. Ex. 3 *enamls*, keeping one, for which please send corrected bill and dupl. to Pittsburgh.

Yours &c.,
SCHWED & NEWHOUSE.

Addressed, "Mess. Wm. Smith & Co., 25 Maiden Lane, New York City." Postmarked "Kansas City, Mo., Nov. 8, 1879."

"EXHIBIT L," JULY 1, 1880.

MESS. SCHWED & NEWHOUSE
Bought of Wm Smith & Co.,

Wm. Smith. } Manufacturers of Fine Gold and Silver Chains and Jewelry.
John Smith. } Manufactory No. 118 Dorrance St., Providence, R. I.
O. C. Lenz. } Office 25 Maiden Lane, N. Y.

	1 doz. Sil. Jump Rings, 4	$ 55	
	¼ " Dime Earrings, 6	1 50	
	¼ " ½ Dime Earrings, 5.25	1 31	
		3 36	
		33	
			$ 3 03
Nov. 22,	1 doz. Ribbon Guards, each $\frac{8\frac{1}{2}\ 10}{900\ 1075}$ o, 1	18 50	
	1 doz. " Vest " o, 1	19 75	
	3 " Hooks, 1, 3, 25.	9 75	
		48 00	
		4 80	
		43 20	
	$\frac{21}{192}$ dwt., 14 K. S. G., 95	183 24	
	$\frac{5}{120}$ " 10 K. Neck, 70.	84 15	
	$\frac{10}{362}$ " " S. G., 75.	271 81	
			$582 40
Nov. 27.	245 dwt., R. N., 95 $\frac{16\text{-}7}{}$		232 75
Dec. 5.	1 10 K., P. G., 358, 70, ...	11 41	
	1 " S. G., 358, 75 $\frac{20\text{-}21}{}$	15 64	
			27 05
1879.			
Dec. 18.	1-14 K. L. Vest, 401, 100 $\frac{15\text{-}7}{}$		15 30
March 8.	1 10 K. Vest, 363, 70 $\frac{25\text{-}16}{}$		17 98
March 21.	55 dwt., 10 K. Vest, 70 $\frac{4}{}$		38 62

11-2
March 26. 1 14 K. Neck, 48, 88 . . . . . 9 75
April 9. 2⅛ dwt., 10 K. Chain, 70 . . . . . 1 75
8
June 30. 43 " 10 K., Neck, 70 . . . . . 30 10
9
25 " 14 K., " 88 . . . . . 22 33
52 43
35-8
July 28. 1 14 K. Vest, 86, 87½ 30 89
$1,011 95
Amount brought forward 1,011 95
25½ 28½ 34½ 40
Aug. 15, ½ doz. Curbs, each, D. S. 1, 2, 3, 4 . . 64 25
25½ 30
½ " " each, tip 5, 6 . . . . . 27 75
15 16½ 24 37½
½ " " each, 3 4 6 8 . . . . . 46 50
33 37½ 40½
⅓ " " D. S. g. T. 1, 2, 3 . . . . . 55 50
27 30 37½
½ " " g. T. drop, 4, 5, 6 . . . . . 47 25
9 10.75
1 " Ribbon Vest, 0, 1 . . . . . 19 75
38½ 10
1 " Ribbon Guards, 0, 1 . . . . . 18 50
275 325
2 " Hooks, 1, 2 . . . . . 12 00
3 " Swivels, B., 2 . . . . . 6 00
2 " Swivels, 2, 2.50 . . . . . 5 00
2 " Swivels, 5, 4.50 . . . . . 9 00
100 150 250 325
3 " Silver Rings, each, 1, 2, 3, 4 . . 24 75
4 " Silver Rings, ast., 11, 13, 4 . . . . . 16 00
6 " Silver Rings, " 46, 48, 275 . . . . . 16 50
5 " Collar Buttons, assorted, 264, 280, 6. . 30 00
6
2 " Collar Buttons, 383, 8 . . . . . 16 00
414 75
41 47
373 28
25½ 28½ 34½ 40
Aug. 15, ½ doz. Curbs, D. S., each, 1, 2, 3, 4, 69 25
¼ " " " 5, 48 . . 12 00
32 40½ 48
¼ " " 3 S. " 1, 2, 3 . . . 30 37
25½ 30 36
½ " " tip " 5, 6, 7 . . 45 75
1, 57
¼ " " " 8, 9 . . . . . 25 50
10½ 12 15
½ " " each, plain, 1, 2, 3 . . .
16½ 20 24 30 37½
4, 5, 6, 7, 8 . . . . . 82 50
48 66
¼ doz. Curbs, each, 9, 10 . . . . . 28 50
21 27 30 37½
½ " " g. T. drop, 3, 4, 5, 6,

42 46
7, 8 . . . . . 104 25
35 37½ 40½ 46

½ doz. Curbs, D. S. 5, T., 1, 2, 3, 4 . . . 79 50
5½ 10

1 " Ribbon Guards, 0, 1 . . . . . 18 50
2 " Ribbon Vest, 0, 9 . . . . . 18 00
3 " Ribbon Vest, 1, 10.75 . . . . . 32 25
1 " Hair Chain 10 00
825 375

1 " Silver Bars, each, 2, 3 . . . . . 7 00
2 " Silver Hooks, 1, 2.75 . . . . . 5 50
3 " Silver Hooks, 2, 3.25 . . . . . 9 75
1 " Silver Hooks, 3 . . . . . 4 00
225 3

1 " Silver Swivels, each, 1, 3 . . . . . 5 25
3 " Silver Swivels, 2, 2.50 . . . . . 7 50
3 " Silver Swivels, B., 2.00 . . . . . 6 00
4½ 4½

1 " Silver Swivels, 5, 8 . . . . . 9 00
1 " Silver Keys, N. 116, 117 . . . . . 7 50

Forward 1,385 21
225 400

3 doz. Watch-bones, 62, 63 . . . . . 21 75
½ " 12 K. Ear Wires, 5 . . . . . 2 50
½ " Swivels, 135, 9 . . . . . 4 50
87½ 187½ 187½

3 doz. Gold Split Rings, each, 1, 2, 3 . . 12 30
2 " Snaps, assorted, 10, 45, 25, 27, 3.50 . 7 00
3 " 14 K. Collar Buttons, 305, 10½ . . . 31 50
1 " 14 K. Collar Buttons, 382 . . . . . 12 00
2 " 10 K. Collar Buttons, 383, 8 . . . . 16 00
6 " 10 K. Collar Buttons, ast., 264, 280, 6 . 36 00
2⅔ doz. 10 K. Collar Buttons, 306, 7 . . . 18 66
½ " Cameo Rings, 373, 54 . . . . . 27 00
¾ " Cameo Rings, 381, 45 . . . . . 33 75
100 150 2

6 doz. Plain Silver Rings, each, 1, 2, 3 . . 30 00
325 500

3 " Silver Rings, each, 4, 5 . . . . . 24 75
6 " Silver Rings, assorted, 11, 13, 41, 4 . 24 00
4 " Silver Rings, assorted, 24, 26, 5.75 . 23 00
6 " Silver Rings, assorted, 46, 48, 2.75 . 16 50
4 " Silver Rings, assorted, 49, 50, 4 . . . 16 00

$975 23
97 52

$877 71

22
133 dwt. 10 K. Flat Neck, 70 . . . . . 93 76
9
207 " 10 K. Neck, 70 . . . . . 145 17
13
328 " 10 K. Vest, 70 . . . . . 229 99
6
341 " 10 K. S. G., 75 . . . . . 255 93

	16 366 dwt. R. N., 95		347 94	
	Cr.		$1,950 50	
	6 164 dwt. R. N., 95		156 04	
				$1,794 46
Oct. 7,	19 16 dwt. 10 K. Neck, 68	$	11 42	
	17 157 " 10 K. S. G., 75		118 28	
	21 232 " 14 K. Vest, 85		197 95	
				327 65
Oct. 10,	168¾ dwt. 10 K. C. N., 80	$	135 00	
	46½ " 10 K. Neck, 68		31 62	166 62
				$3,673 91
Oct. 27,	3 doz. 12 K. Ear Wires, 5	$	15 00	
	225 43½ 350 1 " Snap, each, 2, 6, 27		10 25	
	100 250 3 " Silver Rings, each, 1, 3		10 50	
	6 " Silver Rings, 4, 3.25		19 50	
	12 " Silver Rings, assorted, 13, 41, 55, 4		48 00	
	10-12 doz. Silver Cross, 6, 24		20 00	
	½ doz. Cross, 7, 30		15 00	
		$	138 25	
			13 82	
				124 43
Oct. 25,	10½ 12 15 16½ 20 1 doz. Combs, each, 1, 2, 3, 4, 5	$	74 00	
	⅔ " Combs, each, 7, 30		20 00	
	½ " Combs, each, 8, 37.50		18 75	
	25½ 28½ 1 " Combs, each, D. S., 1, 2		54 00	
	34½ 40 ½ " Combs, each, 3, 4		37 25	
			204 00	
			$ 20 40	
				183 60
Nov. 3,	54-25 1 14 K. S. G., 241, 95			52 22
				4,034 21
	Cr.			
Aug. 21,	By mdse		4 50	
Jan. 16,	By cash		200 00	204 50
				$3,829 71

"EXHIBIT M."

July 1, 1880.

PITTSBURGH, Feb. 12, 1880.

GENTLEMEN:—Through a series of unexpected business reverses, we have been unable to repay the confidential indebtedness on the faith of which we have largely been enabled to pursue our business.

Mr. Heller, who was our largest creditor of that character, who had waited long and patiently for a return of his money, suddenly and unexpectedly placed his claim for collection in the hands of the sheriff, who closed our business and sold our entire stock in trade.

We hope at a very early date to be enabled to submit some offer of compromise to our creditors, to which end we have been promised assistance by one or two of our friends.

Our present inability to pay our debts is a severe blow to us, as it must be unexpected to our creditors.

We struggled against adverse circumstances until we had to yield, and our only consolation is, that our failure has been purely the result of misfortune and reverses, and in no way identified with anything fraudulent or dishonorable.

We ask your patience for a short time, that we may be enabled to submit some offer of compromise, and we invoke the record of our career as business men as a pledge of the sincerity of these statements.

Respectfully yours,

SCHWED & NEWHOUSE.

Received, N. Y., July 2, 1880, from the plaintiffs, my fee as commissioner herein, amounting to $20.00.

JOS. C. WOLFF.

(Endorsed on back of wrapper is the following:)

4518.
Circuit Court.
Wm. Smith et al.
Agst.
Edward Schwed et al.
Deposition of Witnesses.
Comr's fees $20.00.
Witnesses' fees 2.50.

$22.50.
Rec'd same and filed July 6th, 1880.
WALLACE LAWS, Clerk.

In the Jackson County Circuit Court at Kansas City, Missouri.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON. }

WILLIAM SMITH *et. al*, Plaintiff,
against
EDWARD SCHWED, *et. al.*, Defendants.

Affiant, Simon H. Newhouse, being first duly sworn on oath, says that he is one of the defendants in the above entitled cause, and is the same Simon H. Newhouse referred to in the petition; that he is a member of the firm of Schwed & Newhouse, composed of this affiant and the defendant,

Edward Schwed, that on the 26th day of January, A. D. 1880, the said Schwed & Newhouse were justly indebted to the defendant, H. Heller, in the sum of nine thousand, five hundred and twelve and $\frac{50}{100}$ dollars, on the note or bond upon which said Schwed & Newhouse confessed judgment in this court for that amount on said January 26, 1880, in favor of said H. Heller, for money lent and advanced by said Heller to said Schwed & Newhouse; that it is not true that said judgment was fraudulently confessed, or for the purpose of covering up the property of said Schwed & Newhouse, or defrauding the said plaintiffs or any other person of their just demands; but said judgment was confessed by said Schwed & Newhouse for the *bona fide* purpose of enabling the said H. Heller to collect the amount justly due him from said Schwed & Newhouse on said note or bond as aforesaid. And affiant further states, that it is not true that the issue of the execution and the sale mentioned in the petition, or either of them, is to be made with the intention on the part of the said Heller and the said Schwed & Newhouse, or of either of them, of defrauding the plaintiffs out of their just demands, or of transferring the ostensible ownership or possession of any property whatever of said Schwed & Newhouse to said H. Heller by said sale so as to prevent plaintiffs or any person whatever from levying upon or selling any part thereof, or of reaching the same by process of law; but affiant says that said execution was issued, and said sale is to be made with the sole purpose of enabling the said H. Heller to collect his said *bona fide* debt.

SIMON H. NEWHOUSE.

Subscribed and sworn to before me this 17th day of February, 1880.

[SEAL.] W. L. STOCKING,

Notary Public.

NOTICE TO TAKE DEPOSITIONS.

WM. SMITH *et al.*, Plaintiffs,
against
EDWARD SCHWED *et al.*, Defendants.

In the Circuit Court of Jackson County, sitting at Kansas City, State of Missouri.

To the above named Defendants, or Bryant & Holmes, their Attorneys:

You are hereby notified that depositions of witnesses to be read in evidence in the above entitled cause, on the part of the plaintiffs, will be taken at the office of T. S. Parker, No. 158 Fourth avenue, Pittsburgh, Pennsylvania, in the County of Allegheny and State of Pennsylvania, on the eleventh (11th) day of June, 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

BOTTSFORD & WILLIAMS,
SCARRITT & RIGGINS,
Attorneys for Plaintiffs.

Service of the above notice is hereby acknowledged, and issue of dedimus, and all exceptions as to time waived.

Kansas City, Mo., 12th May, 1880

BRYANT & HOLMES,
Attorneys for Defendants.

In the Circuit Court of Jackson County sitting at Kansas City.
WILLIAM SMITH *et al.*, Plaintiffs,
against
EDWARD SCHWED *et al.*, Defendants.

Deposition of witnesses produced, sworn and examined at the office of T. S. Parker, Esq., No. 158, Fourth Avenue, in the city of Pittsburgh, in the County of Allegheny and State of Pennsylvania, before me, the undersigned Clarence Burleigh, a Notary Public in and for said county, in a certain cause now pending in the Circuit Court of Jackson county, sitting at Kansas City, Mo., between Wm. Smith *et al.*, plaintiffs, and Edward Schwed *et al.*, defendants, on the part of the plaintiffs.

Present L. S. Parker, counsel for plaintiffs.

H. C. KOERNER, of lawful age, being sworn and examined on the part of the plaintiff, deposes and saith: I live in the city of Pittsburgh. Am 29 years of age. Am with Rusier Brothers in the safe business. I do not know the plaintiffs, or either of them. I have seen the defendants.

I attended a sheriff's sale in Pittsburgh in which H. Heller was plaintiff and Schwed & Newhouse were defendants, February 3, 1880.

Schwed & Newhouse were in the jewelry business at No. 41, 5th avenue, old number, Pittsburgh. I went to said sale by myself first, and John Riesick afterwards came.

There were not more than a dozen people at the sale at any time, sometimes less. The persons at this sale were principally Jews.

These Jews appeared to be in the interest of Schwed & Newhouse. I attended for the purpose of buying a safe. I did not buy it because they told me that I could not buy it; that they would bid more than I would. I was in attendance in the morning and afternoon all the time the sale was going on. Besides the safe, I bid on jewelry. The jewelry was brought out in trays. I did not intend buying any jewelry when I went there, but when I saw it was selling so cheap I thought I would see if I could not buy some.

Just as soon as I started bidding I was approached by parties there and asked if I was in the jewelry business. These persons were in the interest of Heller & Schwed. In the presence of Heller and Schwed, the defendants, I was asked if I was in the jewelry business. I replied that I was not; when he wanted to know what business or right I had there I replied that I was attending a sheriff's sale, and had as much right there as they had. They replied that they did not think I had. In the presence and hearing of Schwed and Heller Mr. Gallaher said they were buying it in for a friend of theirs at the same time pointing to Mr. Schwed; I then asked him who this friend was, and he pointed to Schwed. I asked this question for the purpose of trying to sell a safe to this friend who was going to start in the jewelry business.

I started to bid, and was requested by Mr. Heller, the plaintiff by one Gallaher, and by others not to bid.

Mr. Heller offered me my choice in the house between a ladies' gold necklace and a pair of gold sleeve buttons not to bid. I could come back after the sale was over and pick them out of the lot he had in the house. I did not do so. I was approached in this manner, while I was bidding, fifteen or twenty times. I bought at this time at this sale.

Mr. Gallaher in the presence of Heller and Schwed said I was very foolish to bid for I might some time get into trouble of this kind myself.

They told me several times to come around after the sale and they would fix it all right.

Edward Schwed, that on the 26th day of January, A. D. 1880, the said Schwed & Newhouse were justly indebted to the defandant, H. Heller, in the sum of nine thousand, five hundred and twelve and $\frac{50}{100}$ dollars, on the note or bond upon which said Schwed & Newhouse confessed judgment in this court for that amount on said January 26, 1880, in favor of said H. Heller, for money lent and advanced by said Heller to said Schwed & Newhouse; that it is not true that said judgment was fraudulently confessed, or for the purpose of covering up the property of said Schwed & Newhouse, or defrauding the said plaintiffs or any other person of their just demands; but said judgment was confessed by said Schwed & Newhouse for the *bona fide* purpose of enabling the said H. Heller to collect the amount justly due him from said Schwed & Newhouse on said note or bond as aforesaid. And affiant further states, that it is not true that the issue of the execution and the sale mentioned in the petition, or either of them, is to be made with the intention on the part of the said Heller and the said Schwed & Newhouse, or of either of them, of defrauding the plaintiffs out of their just demands, or of transferring the ostensible ownership or possession of any property whatever of said Schwed & Newhouse to said H. Heller by said sale so as to prevent plaintiffs or any person whatever from levying upon or selling any part thereof, or of reaching the same by process of law; but affiant says that said execution was issued, and said sale is to be made with the sole purpose of enabling the said H. Heller to collect his said *bona fide* debt.

SIMON H. NEWHOUSE.

Subscribed and sworn to before me this 17th day of February, 1880.

[SEAL.] W. L. STOCKING,

Notary Public.

NOTICE TO TAKE DEPOSITIONS.

WM. SMITH *et al.*, Plaintiffs, *against* EDWARD SCHWED *et al.*, Defendants. } In the Circuit Court of Jackson County, sitting at Kansas City, State of Missouri.

To the above named Defendants, or Bryant & Holmes, their Attorneys:

You are hereby notified that depositions of witnesses to be read in evidence in the above entitled cause, on the part of the plaintiffs, will be taken at the office of T. S. Parker, No. 158 Fourth avenue, Pittsburgh, Pennsylvania, in the County of Allegheny and State of Pennsylvania, on the eleventh (11th) day of June, 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

BOTTSFORD & WILLIAMS,
SCARRITT & RIGGINS,
Attorneys for Plaintiffs.

Service of the above notice is hereby acknowledged, and issue of dedimus, and all exceptions as to time waived.

Kansas City, Mo., 12th May, 1880

BRYANT & HOLMES,
Attorneys for Defendants.

In the Circuit Court of Jackson County sitting at Kansas City.
WILLIAM SMITH *et al.*, Plaintiffs,
against
EDWARD SCHWED *et al.*, Defendants.

Deposition of witnesses produced, sworn and examined at the office of T. S. Parker, Esq., No. 158, Fourth Avenue, in the city of Pittsburgh, in the County of Allegheny and State of Pennsylvania, before me, the undersigned Clarence Burleigh, a Notary Public in and for said county, in a certain cause now pending in the Circuit Court of Jackson county, sitting at Kansas City, Mo., between Wm. Smith *et al.*, plaintiffs, and Edward Schwed *et al.*, defendants, on the part of the plaintiffs.

Present L. S. Parker, counsel for plaintiffs.

H. C. KOERNER, of lawful age, being sworn and examined on the part of the plaintiff, deposes and saith: I live in the city of Pittsburgh. Am 29 years of age. Am with Rusier Brothers in the safe business. I do not know the plaintiffs, or either of them. I have seen the defendants.

I attended a sheriff's sale in Pittsburgh in which H. Heller was plaintiff and Schwed & Newhouse were defendants, February 3, 1880.

Schwed & Newhouse were in the jewelry business at No. 41, 5th avenue, old number, Pittsburgh. I went to said sale by myself first, and John Riesick afterwards came.

There were not more than a dozen people at the sale at any time, sometimes less. The persons at this sale were principally Jews.

These Jews appeared to be in the interest of Schwed & Newhouse. I attended for the purpose of buying a safe. I did not buy it because they told me that I could not buy it; that they would bid more than I would. I was in attendance in the morning and afternoon all the time the sale was going on. Besides the safe, I bid on jewelry. The jewelry was brought out in trays. I did not intend buying any jewelry when I went there, but when I saw it was selling so cheap I thought I would see if I could not buy some.

Just as soon as I started bidding I was approached by parties there and asked if I was in the jewelry business. These persons were in the interest of Heller & Schwed. In the presence of Heller and Schwed, the defendants, I was asked if I was in the jewelry business. I replied that I was not; when he wanted to know what business or right I had there I replied that I was attending a sheriff's sale, and had as much right there as they had. They replied that they did not think I had. In the presence and hearing of Schwed and Heller Mr. Gallaher said they were buying it in for a friend of theirs at the same time pointing to Mr. Schwed; I then asked him who this friend was, and he pointed to Schwed. I asked this question for the purpose of trying to sell a safe to this friend who was going to start in the jewelry business.

I started to bid, and was requested by Mr. Heller, the plaintiff by one Gallaher, and by others not to bid.

Mr. Heller offered me my choice in the house between a ladies' gold necklace and a pair of gold sleeve buttons not to bid. I could come back after the sale was over and pick them out of the lot he had in the house. I did not do so. I was approached in this manner, while I was bidding, fifteen or twenty times. I bought at this time at this sale.

Mr. Gallaher in the presence of Heller and Schwed said I was very foolish to bid for I might some time get into trouble of this kind myself.

They told me several times to come around after the sale and they would fix it all right.

This property principally was knocked down to Heller. Schwed was there posting Heller on what thing was put up, whispering to him &c.

This jewelry was taken out of the safe by trays full. They sold it by trays full. I objected to this, and called the deputy sheriff's attention to this, and asked him if it was not proper and customary to put these articles up in pieces or sets.

He told me that he knew his business. They sold gold rings by the hundreds.

They were generally knocked down to Heller. Schwed was present at the sale, posting Heller as to the goods. A very few people were attracted there, and one person bid on a tray full of jewelry; he bid one dollar. Heller approached the bidder and told him to take one article out of the tray, and Heller gave the bidder a silver dollar to pay for it, and requested him to quit bidding. He (the bidder) picked out an article, paid for it with the dollar Heller gave him, and stopped bidding.

Heller and Schwed were at the sale, acting in concert, and in such a manner that no one else could buy. The goods sold were, to the best of my judgment, solid gold goods. They gave me very little chance to examine them.

Mr. Gallaher said the goods were all sham goods; for me not to bid, or I would get stuck. I believe this was for the purpose of keeping me from bidding. Mr. Gallaher, in the presence of Heller, said they were friends of Schwed and Newhouse. Mr. Schwed, during the sale, would whisper to Mr. Heller when there were goods put up; would punch him in the ribs, crack his fingers, and attract his attention by various ways. The effect of this was that Heller would bid higher, and finally get the goods. I was frequently told I could not buy anything there

Since this sale there has been no change, to the best of my knowledge. The name on the sign is the same. I have been there since the sale, and have seen Schwed and talked to him. I called to get a clock that I had bought at the sale, and Mr. Schwed refused to give it to me; said it did not matter what I bought, I could not have it. Very little, if any, goods went out of the house, and from appearance I should judge that stock, business, etc., were the same as before the sale. I called a day or two after the sale. [Witness looks at book.] This is a Directory of Pittsburgh for 1880 and 1881. Schwed & Newhouse are advertised here as wholesale jewelers at No. 65 Fifth avenue. This is the new number, and is at the same place where the sale occurred. They are not advertised as agents here.

The day after the sale I was waiting at the train at East Liberty to come to Pittsburgh, and while waiting there I saw Mr. Parker; and, knowing him to be an attorney, I asked him how a Sheriff's sale should be conducted, at the same time informing him of what I have already testified to in relation to the sale of Schwed & Newhouse. Mr. Parker then told me that he was attorney for Messrs. Smith and others, of New York City, and had in his hands claims against Schwed & Newhouse. Mr. Parker required of me an affidavit of the facts. I made one the next day, February 4, 1880.

H. C. KOERNER.

I, Clarence Burleigh, Notary Public in and for said County of Alleghany, do hereby certify that H. C. Koerner, the deponent, whose place of residence is in the City of Pittsburgh, in said County, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed by him in my presence on the 11th day of June, A. D. 1880,

between the hours of ten o'clock in the forenoon and 12 M. of said day, at the City of Pittsburgh, in the County of Allegheny and State of Pennsylvania.

[SEAL] CLARENCE BURLEIGH,
Notary Public.

John Riesick, being of lawful age, being duly sworn and examined on the part of plaintiff, deposes and saith: I am a safe-manufacturer at corner of 6th and Mulberry Streets, Pittsburgh. Am 40 years of age. I was present at sale of Schwed & Newhouse—Sheriff's sale. Saw Koerner at this sale in the afternoon. This sale took place at the corner of 5th Avenue and Wood Street, second floor.

Mr. Koerner told me that at Sheriff's sale on 5th Avenue there would be a couple of safes sold. He asked me to look at the safes. I went down in the afternoon, went up into the room, and was approached by a stout man whose name I don't know. He is in business on Second Avenue. He called me by name and said, "What do you want here?" I told him I came down to bid on those safes, if I could buy them cheap enough. Schwed was in the room. There was also present a man from Philadelphia, pointed out to me as Heller.

This man said, "You need not bid on those safes, for you can't buy them. We can bid them up as high as you can. We are bidding these things in for our friends." I told him in that case I would not bid, and did not bid.

The goods there were put up in trays full of boxes, and were offered in lots.

The plaintiffs examined these goods when they were put up. Schwed, a heavy built man, whom I believe to be one of the defendants, would whisper to him what they were worth, and tell him what to bid on them. While I was present, I only saw one purchase of one dollar, and, with this exception, Heller bought nearly the balance. Some three or four of his friends bid sometimes, and goods were sold to them, but they paid no money, and the goods went right back behind the counter. These parties paid no money while I was there. I should judge, there were some eight or twelve persons there, and they all seemed to be friends of Schwed and Newhouse.

I went to this sale after dinner, and remained until it closed.

At the close of the sale, or at any other time, I saw no goods taken away except the dollar purchase I have mentioned.

This stock consisted of gold jewelry. I do not remember of any clocks being offered. There was one man bought something and gave it to Schwed, who put it in his coat-pocket. JOHN RIESICK.

I, Clarence Burleigh, a Notary Public in and for said County of Allegheny, do hereby certify that John Riesick, the deponent, whose place of residence is in the City of Pittsburgh, in the County of Allegheny, and State of Pennsylvania, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing and subscribed in my presence by him, on the 11th day of June, A. D. 1880, between the hours of ten o'clock A. M. and 12 o'clock M., at the City of Pittsburgh, County of Allegheny, and State of Pennsylvania. CLARENCE BURLEIGH,
Notary Public.

T. S. Parker offers in evidence confession of judgment of Schwed and Newhouse to H. Heller, at No. 138 of March term 1880, D. S. B., in the Court of Common Pleas No. 1, of Allegheny County, Pennsylvania, said confession dated December 22, 1879, at one day after date, for the sum of $5,009.33.

Also *Fieri Facias* served said confession of judgment at execution No. 169 of March term 1880, in said court. Execution Docket of March term, 1880, of said court, at said number and said case, showing distribution of said sale, as follows:

Amount of sale Heller *vs.* Schwed & Newhouse *fi fa*, 169, March term 1880.

Amount of sale $3,613 13

Application by sheriff to costs . . . . . $ 322 55

" " " debt on account of this writ . 3,290 58

The receipt of Josiah Cohen, Esq., attorney of Heller in said execution, for the said sum of 3,290 58

A copy of said confession of judgment is hereto annexed marked "Exhibit A."

A copy of said receipt is hereto annexed marked "Exhibit B."

Personal property, sale-book " B, " page 292, copied and copy hereto annexed, marked "Exhibit C."

No one having appeared to cross-examine, now, to-wit, June 11, 1880, at 12 M., adjourned to 2 P. M. of said day.

And now, June 11, 1880, at 2 P. M., met pursuant to adjournment. Present, T. S. Parker, Esq., attorney for Plff. No further testimony being offered and neither defendant or his attorney appearing to cross-examine, the testimony then and there closed.

[Seal] CLARENCE BURLEIGH, Notary Public.

"EXHIBIT A"—CLARENCE BURLEIGH, NOTARY PUBLIC.
(COPY)

[SEAL] PITTSBURGH, Dec. 22, 1879.

$5,009.33. One day after date we promise to pay to the order of H. Heller, five thousand and nine $\frac{33}{100}$ dollars, without defalcation, for value received. And we do hereby empower any attorney of any court of record, within the United States or elsewhere, to appear for us and confess judgment against us, as of any term, for above sum, with costs of suit and costs of attorney's commission of five per cent, and release of all errors, hereby waiving inquisition and agreeing to condemnation of any property that may be levied upon by any execution which may issue forthwith, on failure to comply with the conditions hereof, without stay of execution; also waiving the benefit of any exemption laws or stay laws or any act of assembly relative to executions now in force or hereafter to be passed.

Witness hand and seal. [Signed] SCHWED & NEWHOUSE.
[SEAL.]

"EXHIBIT B."

Received payment by credit on judgment, this 6th day of February, 1880. Thirty-two hundred and ninety $\frac{58}{100}$ dollars.

H. HELLER, Plff.
Per Josiah Cohen, his Att'y.

I hereby certify that the exhibits hereto annexed are copies of the records of the said County of Allegheny, and that they are true and correct copies.

CLARENCE BURLEIGH,
[SEAL] Notary Public.

"EXHIBIT C."

I hereby certify that Personal Property Book "B" of the Sheriff of Allegheny County shows that on February 3, 1880, the personal property of Schwed & Newhouse sold by said Sheriff for the amount of $3,613 13
Plaintiff's bill at said sale 3,569 68

Cash 43 45

$3,613 13

See pages 292 to 298 of said book, inclusive.

CLARENCE BURLEIGH,
[SEAL] Notary Public.

Depositions of witnesses produced, sworn, and examined on the twenty-first day of June, 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law office of Mayer Sulzberger, corner of 6th and Chestnut streets, City and County of Philadelphia, State of Pennsylvania, before me, the subscriber, Benjamin F. Teller, a Notary Public in and for the said Commonwealth of Pennsylvania, residing in the said City of Philadelphia, in a certain cause now depending in the Circuit Court of the County of Jackson, in the State of Missouri, between Wm. Smith *et al.* and Edward Schwed *et al.* defendants, on the part of defendants.

Present, Mayer Sulzburger, attorney for Herman Heller and T. S. Parker and N. G. Dunn, attorneys for Wm. Smith *et al.*, Herman Heller, Charles H. Newell and Isaac Ostheim.

Charles H. Newell, of lawful age, being produced, sworn and examined on the part of the defendants, deposeth and saith: I reside at 4066 Aspen Street. I am book-keeper at the Manufacturers' National Bank of this city. I have been so for about eight years. I know Mr. Heller; he has an account in our bank, has had ever since I have been there. (Exhibits B, C, D, E, F, G, H, J, K and L shown witness) These are all checks drawn by Mr. Heller on our bank; they have been presented at our bank; came through the clearing-house and have been paid at our bank and cancelled. The cut in each of these checks is our cancellation mark; after they were paid, returned these checks to Mr. Heller or his boy, I don't know which; the round stamp on the back of each denotes that they came through the clearing-house to us; the number 27 indicates either the Central National Bank or the National Security Bank; that indicates that the checks were deposited there, except "Exhibit C," which came to us from the First National Bank. CHARLES H. NEWELL.

No cross-examination.

Sworn and subscribed to on the day, and at the place, and within the hour aforesaid. BENJ. F. TELLER,
Notary Public.

Herman Heller, of lawful age, being produced, sworn and examined on the part of the defendants, deposeth and saith: I live at 934 Franklin Street in this city. I am a merchant; white and fancy goods and laces. My place of business is 314 Market Street. I have been in business in Philadelphia altogether about sixteen years. I do not know the plaintiff in this suit. I know Schwed and Newhouse. Mr. Schwed is related to me; he is my brother-in-law, he married my sister. Mr. Newhouse is not at all related to me. I have known them for fourteen years. They have been in Pittsburgh in the jewelry business during the last eleven years. Before that

Also *Fieri Facias* served said confession of judgment at execution No. 169 of March term 1880, in said court. Execution Docket of March term, 1880, of said court, at said number and said case, showing distribution of said sale, as follows:

Amount of sale Heller *vs.* Schwed & Newhouse *fi fa*, 169, March term 1880.

Amount of sale $3,613 13

Application by sheriff to costs . . . . . $ 322 55

" " " debt on account of this writ . 3,290 58

The receipt of Josiah Cohen, Esq., attorney of Heller in said execution, for the said sum of 3,290 58

A copy of said confession of judgment is hereto annexed marked "Exhibit A."

A copy of said receipt is hereto annexed marked "Exhibit B."

Personal property, sale-book " B, " page 292, copied and copy hereto annexed, marked "Exhibit C."

No one having appeared to cross-examine, now, to-wit, June 11, 1880, at 12 M., adjourned to 2 P. M. of said day.

And now, June 11, 1880, at 2 P. M., met pursuant to adjournment. Present, T. S. Parker, Esq., attorney for Plff. No further testimony being offered and neither defendant or his attorney appearing to cross-examine, the testimony then and there closed.

[Seal] CLARENCE BURLEIGH, Notary Public.

"EXHIBIT A"—CLARENCE BURLEIGH, NOTARY PUBLIC.
(COPY)

[SEAL] PITTSBURGH, Dec. 22, 1879.

$5,009.33. One day after date we promise to pay to the order of H. Heller, five thousand and nine $\frac{33}{100}$ dollars, without defalcation, for value received. And we do hereby empower any attorney of any court of record, within the United States or elsewhere, to appear for us and confess judgment against us, as of any term, for above sum, with costs of suit and costs of attorney's commission of five per cent, and release of all errors, hereby waiving inquisition and agreeing to condemnation of any property that may be levied upon by any execution which may issue forthwith, on failure to comply with the conditions hereof, without stay of execution; also waiving the benefit of any exemption laws or stay laws or any act of assembly relative to executions now in force or hereafter to be passed.

Witness hand and seal. [Signed] SCHWED & NEWHOUSE.
[SEAL.]

"EXHIBIT B."

Received payment by credit on judgment, this 6th day of February, 1880. Thirty-two hundred and ninety $\frac{58}{100}$ dollars.

H. HELLER, Plff.
Per Josiah Cohen, his Att'y.

I hereby certify that the exhibits hereto annexed are copies of the records of the said County of Allegheny, and that they are true and correct copies.

CLARENCE BURLEIGH,
[SEAL] Notary Public.

"EXHIBIT C."

I hereby certify that Personal Property Book "B" of the Sheriff of Allegheny County shows that on February 3, 1880, the personal property of Schwed & Newhouse sold by said Sheriff for the amount of $3,613 13
Plaintiff's bill at said sale 3,569 68

Cash 43 45

$3,613 13

See pages 292 to 298 of said book, inclusive.

CLARENCE BURLEIGH,
[SEAL] Notary Public.

Depositions of witnesses produced, sworn, and examined on the twenty-first day of June, 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law office of Mayer Sulzberger, corner of 6th and Chestnut streets, City and County of Philadelphia, State of Pennsylvania, before me, the subscriber, Benjamin F. Teller, a Notary Public in and for the said Commonwealth of Pennsylvania, residing in the said City of Philadelphia, in a certain cause now depending in the Circuit Court of the County of Jackson, in the State of Missouri, between Wm. Smith *et al.* and Edward Schwed *et al.* defendants, on the part of defendants.

Present, Mayer Sulzburger, attorney for Herman Heller and T. S. Parker and N. G. Dunn, attorneys for Wm. Smith *et al.*, Herman Heller, Charles H. Newell and Isaac Ostheim.

Charles H. Newell, of lawful age, being produced, sworn and examined on the part of the defendants, deposeth and saith: I reside at 4066 Aspen Street. I am book-keeper at the Manufacturers' National Bank of this city. I have been so for about eight years. I know Mr. Heller; he has an account in our bank, has had ever since I have been there. (Exhibits B, C, D, E, F, G, H, J, K and L shown witness) These are all checks drawn by Mr. Heller on our bank; they have been presented at our bank; came through the clearing-house and have been paid at our bank and cancelled. The cut in each of these checks is our cancellation mark; after they were paid, returned these checks to Mr. Heller or his boy, I don't know which; the round stamp on the back of each denotes that they came through the clearing-house to us; the number 27 indicates either the Central National Bank or the National Security Bank; that indicates that the checks were deposited there, except "Exhibit C," which came to us from the First National Bank. CHARLES H. NEWELL.

No cross-examination.

Sworn and subscribed to on the day, and at the place, and within the hour aforesaid. BENJ. F. TELLER,
Notary Public.

Herman Heller, of lawful age, being produced, sworn and examined on the part of the defendants, deposeth and saith: I live at 934 Franklin Street in this city. I am a merchant; white and fancy goods and laces. My place of business is 314 Market Street. I have been in business in Philadelphia altogether about sixteen years. I do not know the plaintiff in this suit. I know Schwed and Newhouse. Mr. Schwed is related to me; he is my brother-in-law, he married my sister. Mr. Newhouse is not at all related to me. I have known them for fourteen years. They have been in Pittsburgh in the jewelry business during the last eleven years. Before that

I knew them in New York. I have had business transactions with them during the last eight years. I advanced moneys, and discounted their paper; I think this began in 1872. I last loaned them money in 1879. In loaning them money from time to time I took no other evidence of indebtedness but their notes. They were usually made payable in three or four months; sometimes they were paid when they fell due, and at other times they were renewed. The notes given up to 1876 have been settled for by the defendants. The notes given from 1876 on have been renewed from time to time.

Q. Can you give me an account of your dealings with the firm of Schwed & Newhouse, as respects loans made by you to them after the first of May, 1876?

Objected to by T. S. Parker and N. Gano Dunn, attorneys for Wm. Smith *et al.* on the ground of being incompetent and irrelevant.

A. I have an account prepared by my book-keeper, Mr. Ostheim, which I have here. I have examined the account to see whether it agreed with the actual indebtedness.

Q. What are these papers? (Papers handed to witness.)

A. These are my checks on the Manufacturers' National Bank, of this city, for notes discounted for Schwed & Newhouse by myself.

Objected to by Mr. Parker and Dunn as incompetent and irrelevant.

Q. By whom were these checks signed—all of them?

A. I signed them all.

Q. To whom were they delivered?

A. They were mailed to Schwed & Newhouse.

Q. When did you get them?

A. These checks were returned to me by the bank after they had been paid, of course. They were returned by the Manufacturers' National Bank, on which they were drawn.

Q. Were these notes, for which these checks were given, fully paid, or were they not?

(Objected to as incompetent and irrelevant.)

A. They were not.

Q. What are the amounts of the loans made by you to Schwed & Newhouse since May, 1876; either by way of discounting their promissory notes or otherwise? I want the several amounts.

A. I can tell by referring to the checks I gave them, and to the account I have had prepared. The checks are as follows.

(Objected to as incompetent and irrelevant.)

The witness now refers to the checks which he now has in his hands:—

No.	2191,	May 23d, 1876, for	. . . . .	$1,104 84
"	2845,	Sept. 7th, 1877, "	. . . . .	1,468 25
"	3062,	Feb. 28th, 1878, "	. . . . .	972 62
"	3144,	April 24th, 1878 "	. . . . .	1,939 17
"	3500,	Feb. 11th, 1879, "	. . . . .	500 00
"	3504,	" 12th, " "	. . . . .	2,450 43
"	3661,	May 23rd, " "	. . . . .	2,000 00
"	3668,	" 28th, " "	. . . . .	1,000 00
"	3681,	June 7th, " "	. . . . .	1,000 00
"	3707,	" 19th, " "	. . . . .	368 40

At the date of check No. 2191, May 23d, 1876, Schwed and Newhouse were indebted to me in the sum of $350 for one of their customers' notes which I had discounted for them, which had been protested. In re-

turn for this check of May 25, 1876, and the $350 I have spoken of, I received the promissory note of Schwed & Newhouse for $1,500.00.

In return for check of Sept. 7th, 1877, I received their note for $1,500.00.

In return for my check of Feby. 28th, 1878, I received their note for $1,000.00

In return for my check of April 24th, 1878, I received their note for $2,000.00.

In return for my check, dated Feby. 11th, 1879, and Feby. 12th, 1879, I got their promissory note for $3,000.00.

The reason the notes were made larger than the checks is that there was interest added for the time the notes had to run. Interest was charged at the rate of six to eight per cent per annum; in fact, from five to eight per cent per annum. For my checks No. 3661 and 3668 and 3681 and 3707, with addition to a few drafts on some of my customers in Pittsburgh, and for the amount of a note protested, and endorsed by Schwed & Newhouse, I received notes amounting to $5 000; there was some interest added to the amounts of the checks; the amount of interest charged was at the rate of six per cent—I think; the amount of the checks, the one protested note and a few drafts, and the interest amounted to $5,000 I got one judgment note from Schwed & Newhouse; the amount was $9,000. I got it in about February, 1879 I got the note for $9,000 for money advanced, and to be advanced. I had advanced them $6,000, and they were to receive $3,000 additional on my receipt of the judgment note. The amount of the $6,000 was based on the checks numbered 3144, 3062, 2845 and 2191 and the protested note of $350; checks No. 3500 and 3304 cover the remaining $3,000 of the judgment note of $9,000.

Q. What did you do with the promissory notes, amounting together to $5,000, for the loans made by you to Schwed & Newhouse in May and June, 1879?

A. After they failed to remit, I handed them to Josiah Cohen, my attorney at Pittsburgh, for collection. The $9,000 judgment note, I think I handed to Mr. Sulzberger, my attorney at Philadelphia, for collection. I understand the proceedings in Kansas City were based on that note.

Q. Has that judgment note of $9,000 been wholly or partially paid to you in any way?

A. Not yet; I expect to get those $8,000 in court in Kansas City?

Q. Has your claim for the $5,000, which you confided to Mr. Josiah Cohen for collection, been wholly or partially satisfied in any way?

A. It has realized $3,500 through sheriff sale at Pittsburg.

Q. Is that sum of $3,500 the only money derived by you up to the present time from your proceedings on these claims against Schwed & Newhouse, or derived as payment of these claims in any way whatever?

A. That is all I received.

(Paper shown witness.)

This is the statement of my claim against Schwed & Newhouse, I referred to, made by my bookkeeper.

Mr. Sultzberger for Mr. Heller offers in evidence checks Nos. 2191, 2845, 3062, 3144, 3500, 3504, 3661, 3668, 3681, 3707.

Q. Are you acquainted with the handwriting of Mr. Schwed, or Mr. Newhouse, or both.

A. I know them both. I think the endorsement of all these checks are in Mr. Schwed's handwrrting.

The checks above referred to marked Exhibits B. C. D. E. F. G. H. J. K. and L. hereto attached.

The account of Herman Heller with Schwed & Newhouse, above referred to, are marked Exhibits A., and hereto annexed, offered in evidence.

Objected to by Messrs. Parker and Dunn as incompetent and irrelevant—this objection to cover the above offers.

Adjourned to 4:30 P. M. this day, Monday, June 21, 1880, not being able to complete the taking of said depositions by reason of other engagements.

MONDAY, June 21, 1880, 4:30 P. M.

Q. What is the indebtedness of Schwed & Newhouse to you on account of the loans and discounts made by you for them?

A. There is a balance now of about $10,500 with interest.

Q Is this balance after crediting the $3,500 realized by sheriff's sale in Pittsburgh, spoken of?

A. It is.

Cross-examination by Messrs. Parker and Dunn, who notify H. Heller to produce to-morrow, June 22, 1880, at 11 A. M., all correspondence, books of account in relation to moneys alleged to be due from Schwed & New house, to H. Heller, and all correspondence and books of account in relation to any money transaction between them from 1872 to date.

Adjourned by consent of counsel to Tuesday, June 22, 1880, 11 A. M.

Pursuant to adjournment as above stated on Tuesday, June 22, 1880, 11 A. M., continued the taking of said depositions as follows:

H. Heller stated yesterday that in loaning them money from time to time, I took no other evidence of indebtedness but their notes. He desires now to correct said statement. In February, 1879, when their indebtedness to me was $6,000, and they desired another loan of $3,000 additional I insisted upon their giving me the judgment note of $9,000.

Cross examined by Messrs. Parker and Dunn:

I have read the testimony in this case since the adjournment; I did a little while ago.

Q Have you had an interview with your counsel, Mr. Sulzburger, or any conversation relative to the above correction?

A. I have had. I pointed out the answer to him and inquired whether I could correct it a few minutes ago, or a half of an hour ago.

Q. Where are the notes of Schwed and Newhouse referred to in your testimony on page 2?

A I think they are all returned except one—returned to Schwed & Newhouse, with the exception of the one of $3,000.

Q. Where is that?

A. I have it here.

Q. The note in your possession is one of $3,000 is it, of that date, November 4, 1879?

A. It is.

Q. How many accounts of the alleged indebtedness of Schwed & Newhouse to you have you made out since January 1, 1879?

A. I have made out but one account as much as I know of.

Q. You mean by this answer, you or your book-keeper have made but one?

A. Yes sir.

Q. Mr. Heller, state if you copy your business letters.

A. We do copy our business letters.

Q. What do you mean by we?

A. I copy all letters appertaining to my regular business.

Q. Did you copy the correspondence referred to in your testimony between Schwed & Newhouse and yourself?

A. I did not.

Q. Have you the etters of Schwed & Newhouse remitting the alleged notes to Mr. Heller at Philadelphia?

A. I have some.

Q. What disposition, if any, have you made of the other correspondence?

A. I have not made any disposition of them. As far as I know, the notes were sent occasionally, in envelopes without any letter.

Q Did you acknowledge receipt of them by letter?

A. I may have done so.

Q. If you did, did you copy your letters acknowledging their receipt?

A. I did not.

Q. Why not?

A. I didn't think it was necessary.

Q. What part of the correspondence have you?

A. I have some from 1873 to 1879.

Q. State if any notes were sent you by them unaccompanied by letter.

A. There was a few, I think.

Q. Explain why they were not accompanied by a letter.

A. I don't know.

Q. What was the state of the alleged account between Schwed & Newhouse and yourself on June 19, 1879?

A. I can't tell you unless I refer to my statement.

Q. Did you visit Schwed & Newhouse in Pittsburgh?

A. I did, occasionally.

Q. Where were you in the first part of February, 1879?

A. I can't keep dates in my head where I was.

Q. Were you present at a sheriff sale in Pittsburgh?

A. I was.

Q. State were you present in Pittsburgh in attendance on a sheriff's sale in which you were the plaintiff in the execution and Schwed & Newhouse defendants—sale on execution No. 169, of March term 80, Allegheny County.

A. I was present at a sheriff's sale of Schwed & Newhouse. I don't know whether it was this one or not.

Q. When did this sale to which you refer occur?

A. I forget what day it was.

Q. Do you know the month?

A. I think it was either in February or March, 1880.

Q. Who is your attorney in Pittsburgh?

A. Josiah Cohen.

Q. Was he your attorney during the time of that sale?

A. He was.

Q. Was he fully authorized to receipt the Execution Docket on his execution against Schwed & Newhouse?

A. He was.

Q. State, if you know, what, if any disposition, was made of the stock of Schwed & Newhouse on the sale on your writ.

A. It was sold by the sheriff, and I purchased part of it.
Q What part did you purchase?
A. I bought considerably of it.
Q. About how much?
A. I bought about $3,300 worth.
Q. Would not your attorney, Cohen's, receipt show how much you bought of that stock?
A. I suppose it would.
Q. Do you recco'lect the amount of the sale on this execution referred to?
A. I think there was a return of $3,500 after deduction of sheriff's expenses.
Q. State if your purchases were a credit upon your execution against Schwed & Newhouse?
A. I suppose they must have been.
Q. Then there was no money paid to the sheriff?
A. There was not; the money was not asked for.
Q. Was this sale you refer to upon confession of judgment of Schwed & Newhouse to you on a judgment note dated, Pittsburgh, December 22, 1879, at one day after date, to your order for the sum of $500 and 33 cents.?
A. I don't know.
Q. How many were at that sale in Pittsburg?
A. There were a great many there.
Q. Was Schwed, of the defendants, there?
A. He was there.
Q. Do you know J. C. Koerner and John Riesick, of Pittsburgh?
A. I do not.
Q. You said in your answer that there were a great many at the sale. Give the name of any one you know who attended the sale.
A. As much as I can remember there were only two or three that I knew personally besides Mr. Schwed.
Q. Who are they?
A. One was Schwed's traveler, I don't know his name; one was Mr. Oppenheim, in the notion business in Pittsburgh; he is the business man, and a Mr. Frank in the notion business also in Pittsburgh. I don't know his first name.
Q. Are these all you know who were there?
A. These were about all I knew.
Q Was your attorney, Mr. Cohen, there in addition to those two?
A. I believe he was.
Q. Was there a gentleman there by the name of Gallagher whom you knew?
A. I did not know him before; after the sale I was introduced to him.
Q. Had you any conversation with him prior to your introduction?
A. Not that I know of.
Q. How long were you in attendance at that sale?
A. From the time it commenced until it was ended.
Q. What time in the morning did it commence?
A. I think it commenced at half-past nine or ten.
Q. When did it end?
A. About between five and six—near six in the evening of the same day.

Q. Was the sale conducted in the store-room on Fifth avenue and Wood street?

A. It was.

Q. What part of the room were you in during the sale?

A. Where all the other people were.

Q. Where was Schwed?

A. He was in the same part of the room where all the other people were.

Q. Were you near enough to him, Schwed, to speak to him?

A. I was; it is not a very large room.

Q. State if you had any conversation with Schwed during the sale?

A. I had very little to say to him.

Q. About how often did you talk with him during the sale?

A. I don't remember that.

Q. Had you one or a dozen conversations with him during the sale?

A. I said before I don't remember.

Q. State the conversation you had with Schwed that you do remember?

A. I don't remember any conversation had with Schwed during the sale.

Q. State what, if anything, Schwed said during the sale, with reference to the stock being sold, of the value of the articles being sold?

A. I don't remember any remarks he made, with the exception of some he made when goods were sold cheap or dear.

Q. State to the best of your recollection, what goods you refer to as being sold cheap?

A. There were so many lots I cannot remember which.

Q. Were the purchasers of these lots you refer to other than yourself?

A. There was sometimes others.

Q Others what?

A. Other people buying.

Q. How many other people buying?

A. I can't recollect how many.

Q. About how many?

A. There must have been a dozen, as near as I can recollect.

Q. Did this dozen buy goods at the sale while you were there?

A. I think so.

Q. Can you give me the name of any of the dozen who bought goods referred to?

A. I can't recollect any except Franks, Gallaher, and I think Oppenheim.

Q. What became of the goods they bought?

A. The goods Frank and Gallaher bought, I purchased or my attorney purchased from them.

Q. When did you purchase them?

A. About half-past six of the evening of the day of the sale.

Q. Was this after the sale?

A. Certainly, it was after the sale.

Q. State if these goods were knocked down by the deputy sheriff to the parties you named?

A. Yes, sir.

Q. Did the sheriff take a memorandum of the names?

A. He put it down in his book.

Adjourned to 4 p. m., this day, Tuesday, June 22, 1880.

TUESDAY, June 22, 1880, 4 p. m.

Q. What amount of money did you pay to the parties from whom you bought after the sheriff's sale?

A. I think one fifty and the other one hundred dollars, over and above the amount of their bills, I think it was.

Q. What did you pay this for?

A. To let me have the goods.

Q. What was the amount of their and each of their bills?

A. I don't remember exactly.

Q. About how much?

A. The one was probably between $300 and $400 and the other about $600 to $800.

Q. What was the name of the party whose bill was about $300?

A. Mr. Frank.

Q. What is the name of the party whose bill was some $800?

A. Mr. Gallaher.

Q. State if in purchasing these goods these parties gave their names to the Sheriff, and had the goods been sold by the sheriff to them?

A. It was.

Q. Did the Sheriff make a memoranda of these sales to Gallagher and Frank?

A. Yes, I think he did.

Q. State in what manner you paid Gallaher and Frank the $300 and $800, or any amount of money you paid them?

A. My attorney attended to it.

Q. You, then, did not pay them at all?

A. I did not.

Q. What was the amount of their and each of their bill of goods bought at the sale?

A. I don't know.

Q. Have you any memoranda of the goods, or receipt for moneys so paid by you?

A. I have not.

Q. Did you take any receipt or memoranda?

A. No, sir.

Q. As a business man you are in the habit of taking a receipt for moneys paid?

A. It is not, when I have an attorney to attend to it.

Q. Are Gallaher and Frank Jews?

A. I think Frank is.

Q. Did these goods so purchased by Frank and Gallaher ever go into their possession?

A. I don't know; I left the same night.

Q. While you were there did they take possession of the good they bought?

A. I don't know; the sheriff had possession of them when I left.

Q. Did the sheriff hand them over to them when they bought them?

A. Not immediately at the time of sale.

Q, Did you see him detiver them at any time to these parties, Frank and Gallaher?

A. No, sir.

Q. State whether these goods went back in the position in the store where they had formerly been.

A. The sheriff put them back where he stood at the time of the sale.

Q. Of what did that stock of goods consist?

A. Watches, jewelry, clocks, safes, shelves, counters, etc.

Q. What became of the goods you purchased at that sale?

Objected to by Mr. Sulzburger as irrelevant, because the validity of the proceedings of the court and its officers at Pittsburg are not inquired into here, and because the proper form for such inquiry is the court under whose writ the sale was effected.

A. I gave them to my sister, Mrs. Schwed

Q. Is that true of all the goods that you purchased, or Frank and Gallaher purchased at that sale?

A. I gave her all the goods that I purchased.

Q. Are Schwed and Newhouse in business at this date in Pittsburgh?

A. I don't know.

Q Have the goods been removed from the store-room in which they were sold.

A. I have not been there. I don't know

Q. Where is your brother-in-law, Schwed, at this date?

A. In Pittsburgh; I suppose so.

Q. Is his place of business at the corner of Fifth avenue and Wood street, Pittsburgh?

A. I think so.

Q. State whether he is in the jewelry business at that place.

A. I think he is there as agent.

Q. Is Newhouse there?

A. I don't know.

Q. What is the style of the firm as advertised to-day?

A. It is Schwed & Newhouse, Agents.

Q. Whom are they agents for?

A. I don't know.

Q. You do know Schwed is acting as agent there?

A. I said so before; acting, Schwed & Newhouse, agents.

Q. Who are they agents for?

A. I told you before I don't know.

Q. State if they are your agents or agents of your sister?

A. They are not my agents; they may be my sister's agents.

Q. Then, where did you get the judgment note of Schwed & Newhouse of date December 22, 1879, for $5,009.33.?

A. I did not get it at all; my attorney got it, I suppose.

Q. When did you first hear of this judgment note of Dec. 22, 1879, for $5,009.33 signed Schwed & Newhouse, payable to the order of H. Heller at one day after date?

A. I never heard of this note before.

Q. What was the amount of the uote in your favor upon which Schwed & Newhouse were sold out and which sale you attended?

A. Five thousand dollars.

Q. Of what date was it?

A. There were several notes.

Q. Were there several judgment notes given by Schwed & Newhouse to you?

A. There was but one judgment note given.

Q. What was the amount of that judgment note?
A. Nine thousand dollars.
Q. When did you get it?
A. I got that in the early part of 1879.
Q. How did you get it?
A. I got it by mail; mailed from Pittsburgh.
Q. How was that note signed?
A. It was signed Schwed & Newhouse, and by each of the firm separate.
Q. What, if anything, was done with that $9,000?
A. It was sent out for collection at Kansas City.
Q. If Schwed & Newhouse had confessed judgment to you at No. 138, March Term, 1880, Allegheny County, Pa., D. S. B. Docket, for $5,009.33, was this note of $9,000 sent to Kansas City in addition to the $5,000 confessed?
A. This note of $9,000 was sent to Kansas City, and the $5,000, which they owed me additionally, was the $5,009.33 upon which they were sold out and execution issued in Pittsburgh.
Q. What, if any, instructions did you give your attorneys in Pittsburgh and Kansas City as to the collection of these notes?
Objected to by Mr. Sulzburger upon the ground that the communications of counsel and client are privileged.
A. I handed the one note of $9,000.00 to Mr. Sulzburger, to be collected in Kansas City; and the other notes of $5,000 I handed to Mr. Josiah Cohen for collection.
Q. When did you hand Josiah Cohen the $5,009.33 note, if ever you did?
A. I handed him the notes for $5,000.00 for collection.
Q. Did you ever see the judgment note for $5,009.33 entered up in Allegheny County?
A. I don't think I ever did.
Q. Had Josiah Cohen any judgment note of Schwed & Newhouse payable to your order?
A. I suppose he obtained a judgment note for the notes I left with him for collection.
Q. When did you leave these notes with him for collection?
A. I think in January, 1880.
Q. Then it was after that that Mr. Cohen got the judgment note of $5,009.33 from Schwed & Newhouse?
A. I suppose so.
Q. Did you leave them in person with Mr. Cohen?
A Yes, I did; this might have been in December, '79, that I left the notes.
Q. Were you in Pittsburgh in December, 1879?
A I was there either in December, 1879, or January, 1880.
Q. Where did you stop when in Pittsburgh, in December or January?
A. At the Seventh Avenue Hotel, in Pittsburgh.
Q. Were you in Pittsburgh but once in December, 1879, or January, 1880?
A. I made but one visit.
Q. Did you register at the Seventh Avenne Hotel, Pittsburgh?
A. I did.
Q. How long were you there?

A. Over night.

Q. What, if any, agreement did you make with Schwed & Newhouse, or either of them, as a consideration for the judgment note of $9000.00 sent to Kansas City?

A. I made no agreement with them or any of them.

Q. Was any made by your agents or attorneys to your knowledge?

A. No, sir.

Q. You have said you have known Schwed & Newhouse about eleven years?

A. Yes, sir.

Q. To what extent were you acquainted with their business?

A. I did not know anything about the extent of their business.

Q. State what, if any arrangement or understanding was made by you or your agents with reference to the alleged indebtedness of Schwed & Newhouse to you, by you, or your attorneys or agents, receiving the $5,009.33 judgment note and $9 000 judgment note, signed Schwed & Newhouse?

A. What arrangement? I do not know any.

Q. Did you authorize anyone to make any arrangement for you?

A. I do not know what arrangements you mean.

Q. Did you authorize anyone to make any arrangement with Schwed & Newhouse for you on the reception of the judgment notes, or either of them?

A. I made no arrangements. I handed these notes to my attorneys for the purpose of obtaining what was due to me.

Q. How often have you visited Schwed & Newhouse at Pittsburgh?

A. Never visited them purposely.

Q. How often have you been in their store room in the last eight years?

A. Maybe a dozen times.

Q. Do you remember of their making to you any statement as to their financial standing at these times?

Objected to by Mr. Sulzburger, as irrelevant.

A. They never made a statement to me.

Q. Did you ever ask for a statement of their affairs at the time or times of the alleged loans?

A. I did not.

Q. Did you make these alleged loans without any inquiry as to their standing, from time to time?

A. Unfortunately, I never did inquire as to their standing.

Q. State, if you know, what was the amount of indebtedness of Schwed & Newhouse prior to December 23, 1879, and at that time?

A. I don't know what they owed outside of what they were indebted to me.

Q. State what, if you know, was the amount of capital invested by Schwed & Newhouse in their business at Pittsburgh and Kansas City.

A. I do not know.

Q. Do you know of their having made any purchases of goods in New York and other places in September, October and November, 1879?

A. I suppose they did; I don't know anything of their business.

Adjourned to Wednesday, June 23, 1880, 11 a. m.

WEDNESDAY, June 23, 1880, 11 a. m.

Q. Do you remember date of the $9,000 judgment note sent to Kansas City?

A. About February, 1879.

Q. Did I understand you to state that this note was sent you by Schwed & Newhouse from Pittsburgh during February, 1879?

A. It was.

Q. How was it sent you?

A. By mail.

Q. Was it accompanied, or not, by any letter?

A. It may have been accompanied by a letter of a few lines.

Q. This is the correspondence produced by you on request of the plaintiff's attorney?

All correspondence handed to witness.

A. It is.

Q. Is the letter of a few lines, accompanying said note, among the correspondence?

A. I cannot find it.

Q. Do you remember where you were in February, 1879?

A. I was in Philadelphia, New York, and I think I was in Pittsburgh.

Q. Was the mailing of that note preceded or followed by any correspondence relative thereto?

A. It was not preceded by any correspondence, nor was there any correspondence about the note.

Q. State when you handed this note to Sulzburger.

A. I think it was in December 1879 or January 1880.

Q. State, since your dealings with Schwed & Newhouse, if you held any moneys in trust for Schwed.

A. No, sir.

Q. Had you any moneys in trust for your sister, the wife of Schwed?

A. No, sir.

Witness refers to correspondence in his hand.

Q. Is not all the correspondence produced by you signed Edward?

A. It is. (After examination of correspondence by witness.)

Q. Have you any correspondence relative to alleged loans signed by Schwed & Newhouse?

A. I produced all the correspondence I had in my possession.

Q Who is Edward, whose name is signed to the correspondence produced?

A. Edward Schwed.

Q. Is he your brother-in-law?

A. Yes, he is.

Q. Have you produced books of account as requested?

A. I have.

Q. Is the account of Schwed & Newhouse in relation to the alleged loans in any or either of them?

A. It is not.

Q. Is there any letter among this correspondence relative to the alleged loans made by you to Schwed & Newhouse?

A. There is.

Q. Produce it.

Witness produces letters marked (Exhibits M. N. O. P. Q. and R., and hereto annexed).

Q. Are these letters all the correspondence you have received relative to the loans to Schwed & Newhouse, from the time of making them to date?

A. These are all the letters which I preserved.

Q. Give the dates of them.

A. Exhibit M., July 26, 1873; Exhibit N., January 27, 1873; Exhibit O., July 22, 1873; Exhibit P., has no date, because the boys tore it off in taking it off the file; Exhibit Q., May 9, 1873; Exhibit R., July 12, 1879.

Q. The balance of thirty seven letters and postal cards produced by you as the correspondence of Schwed & Newhouse, is concerning what?

A. They consist of remittances and inquiries as to the commercial standing of parties in Pittsburgh.

Adjourned to this day, Wednesday, June 23, 1880, 2:30 P. M.

WEDNESDAY, June 23, 1880, 2:30 P. M.

Re-examination by Mr. Sulzburger.

Q. You stated on cross-examination yesterday that you had not before heard of a judgment note of $5,009.33, signed Schwed & Newhouse, and payable to your order one day after its date. Do you know whether or not Mr. Cohen, your Pittsburgh attorney, obtained a note like that for you from Schwed & Newhouse?

A. I suppose he received that note in exchange for some promissory notes of $5,000 left with him in December, 1879, for collection.

Q. When did you leave the promissory notes with Mr. Cohen for collection?

A. On Dec. 22, 1879. I had reference a little while ago to some charges which were made for goods which I had sold on that day in Pittsburgh. I had reference to my sales-book.

Q. Where are the letters received from Schwed which you have not preserved or produced?

A. I don't know; I suppose they were destroyed; as I had no idea that they would ever be of any use I did not preserve them.

Q. Were there many or few?

A. I think there were a good many. My sister is in the habit of writing family letters every week, and occasionally Mr. Schwed would add his communications to me in those letters.

Q. Did you keep any account in any book, whether produced here or not, whether relating to your business in Market Street or not, of your loans to Schwed & Newhouse, other than the records in your check-book?

A. I only kept it in my check books.

Q. Then there is no account in your ledger?

A. No, sir.

Q. Why not?

A. It was money advanced to them out of my private funds; except when I did take it out of the funds of the business, I charged it to my own account.

Q. Do you mean that these checks drawn by you in favor of Schwed & Newhouse are simply charged to your account in the ledger?

A. They are charged to my account when I had no money outside of the funds employed in my business.

H. HELLER.

Subscribed and sworn to before me on the days and times, at the place, and within the hours aforesaid.

[SEAL] BENJ. F. TELLER,
Notary Public.

WEDNESDAY, June 23, 1880.

Isaac Ostheim, of lawful age, being produced, sworn and examined on the part of the defendant, deposeth and saith: I am the book-keeper of Herman Heller; I have been with Mr. Heller very near seven and a half years. (Checks marked Exhibits B, C, D, E, F, G, H, J, K and L shown witness) The body of some of these checks is the writing of Mr. Heller, and some of them have been written by me; they were drawn in their regular order according to their number on the days they bear date; they were charged to the personal account of Mr. H. Heller; we got them back again from the bank; they were paid at the bank. No cross-examination.

Re-examination by Mr. Sulzburger: ("Exhibit A" shown witness).

This is in my handwriting.

Q. From what data did you make it up?

Objected to by Mr. Parker as incompetent and irrelevant; as not the best evidence.

A. From memoranda furnished me by Mr. Heller.

ISAAC OSTHEIM.

Sworn and subscribed to before me on the day, at the place and within the hours aforesaid.

[SEAL] BENJ. F. TELLER,
Notary Public.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF PHILADELPHIA, }

I, William B. Mann, Prothonotary of the Court of Common Pleas of said County, *Do Certify* that Benj. F. Teller, Esquire, before whom the annexed affidavit made, was at the time of so doing a Notary Public duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments, &c., and to all whose acts as such, full faith and credit are and ought to be given as well in Courts of Judicature as elsewhere; said Court being a Court of Record; and that I am well acquainted with the handwriting of the said Benj. F. Teller, Notary Public, and verily believe his signature thereto is genuine, and that said affidavit purports to be taken in all respects as required by the laws of the State of Pennsylvania. In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 25th day of June, in the year of our Lord, one thousand, eight hundred and eighty.

[SEAL] WILLIAM B. MANN,
Notary Public.

I, Benjamin F. Teller, Notary Public in and for the Commonwealth of Pennsylvania, and residing in the City of Philadelphia, do certify that in pursuance of the annexed commission and notice, came before me at the law office of Mayer Sulzburger, corner 6th and Chestnut Streets, City and County of Philadelphia, State of Pennsylvania, Herman Heller, Isaac Ostheim and Charles H. Newell, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy

aforesaid; that they were examined and their examination reduced to writing and subscribed by them respectively in my presence, on the days, between the hours and at the place in that behalf first aforesaid, and their said depositions are now herewith returned. And I further certify that said Herman Heller, Isaac Ostheim and Charles N. Newell are residents of the County of Philadelphia, in the State of Pennsylvania.

Given at Philadelphia, in the County of Philadelphia and State of Pennsylvania, this 23d day of June, 1880.

[SEAL.]

BENJ. F. TELLER,
Notary Public, 537 Chestnut St., Philadelphia, Penn.

"NOTICE TO TAKE DEPOSITIONS."

WM. SMITH *et al.*, Plaintiffs, *Against* EDWARD SCHWED *et al.*, Defendants. } In the Circuit Court at Kansas City, for the County of Jackson and State of Missouri.

To the above named Plaintiffs:

You are hereby notified that depositions of witnesses, to be read in evidence in the above entitled cause on the part of the defendants, will be taken at the law-office of Mayer Sulzburger, corner 6th and Chestnut Streets, City and County of Philadelphia, State of Pennsylvania, and on the 21st day of June, A. D. 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours till completed.

BRYANT & HOLMES,
Attorneys for Defendants.

Service of the above notice is hereby acknowledged and issue of *dedimus* and all exception as to time waived.

June 14, 1880.

SCARRITT & RIGGINS,
Of Attorneys for Plaintiffs.

"EXHIBIT R."

DEAR HERMAN:—I enclose herewith nine notes, amounting to $1,050, which please have discounted for us as soon as possible, as we have to assist some of our customers in taking up their notes due in the early part of next week. You will notice that R. Lyons' note is drawn with interest. We have also to pay a few accounts next week.

By complying with the above request you will much oblige

Yours, EDWARD.

(On back of this letter appears the following:)

Brown & Son, June 14, 90 days	$100 00	$1 30
Reuben Lyons, with interest, June 29, 90 days	100 00	1 55
L. C. Bullard, July 2, 3 months	100 00	1 64
Joseph Miller, July 3, 3 months	100 00	1 65
George E. Behme, June 20, 4 months	100 00	2 31
C. F. Kessellmine, 4 months	150 00	3 20
C. Shurback, 4 months	150 00	3 40

C. F. Kessellmine, July 12, 4 months	150 00	3 48
George E. Bothme, July 12, 4 months	100 00	1 94
	$1,050 00	$20 47
	20 47	
	$1,029 63	

"EXHIBIT Q."

(Written in German and is as follows:)

Pittsburgh, Mai 9, 1873.

Lieber Herman:—Ich übersende dir innliegend 2 Noten im Betrag von $2,000, und ersuche dich dieselben wo möglich für uns discontiren zu lassen, da Ich wieder ziemlich kurz bin. Wenn es sein kann, so set so gut und besorge es so bald wie möglich. Mit Herzlichen Gruß,

Dein

Edward.

(Which, translated, is as follows:)

PITTSBURGH, May 9, 1873.

DEAR HERMAN:

I transmit you herewith 2 notes, amounting to $2,000, and would ask you, if possible, to discount them for us, as I am again tolerable short. When it be so good as to attend to it at once.

With kind regards,

Yours,

EDWARD.

"EXHIBIT P."

DEAR HERMAN:

I send you herewith check for $500 on account of notes due to-morrow; also note of $1,000, which please have discounted for us and take out balance due upon $200 from last note and $500 of note due to-morrow, and send your check for balance, less discount. I thought to be able to send the whole amount, but it is impossible for me to do so, as everything is at a stand-still again since the first of this month; no business and no collections. Truly yours,

EDWARD.

"EXHIBIT C."

PITTSBURGH, July 22, 1873.

DEAR HERMAN:

I send you herewith two notes at two and three months, $1,000 each, which please have discounted for us if possible, as we can hardly make any collections now and must pay some accounts overdue. Money being cheap now East, we suppose you will be able to obtain it at lower rates; anyhow, do the best you can, and let me know soon. My love to all. From your EDWARD.

"EXHIBIT N."

PITTSBURGH, January 27, 1873.

DEAR HERMAN:

Enclosed find two notes, amounting to $2,000 at two and three months, which please have discounted for us. About the $1,000 due you February 13th, I will wait yet and if I cannot pay it up by that time, will send you a short note and pay the same, as it has been standing long enough. On the 13th of February we will owe you for interest, $120, which you can deduct on the $141, so far laid out for your shares. Am sorry you had some losses; hope they are not very large. We will have to stand them once in a while; we, too, lost about $2,000 last year. About Berner, I cannot tell you more than they tell me, and that is very little. The fact is, they had a very poor season last fall and do not do anything now. You ought to know his standing better than I do. I do not think if it should come to the worst, he would let you lose anything, but do not believe there is any danger. Yours,

EDWARD.

"EXHIBIT M."

PITTSBURGH, July 26, 1873.

DEAR HERMAN—Yours of yesterday, with check of $1,950, came to hand, and am much obliged for same, but cannot find out how you figured the interest, as I cannot get the same amount. Besides you have deducted $10, loaned to Leckeman, which you should have *added*. If you calculate 2 and 3 months, it makes $41.65; if you calculate 61 and 91 days (being from to-day, the date of your check, until the notes become due), it makes $42 22. Please let me know. Our stocks brought 7½ per cent; a gain for the last six months.

Much obliged for the photographs sent. Bella's is very good; and the little fellow I suppose too, but cannot judge, as he changed a good deal since I saw him; he must be a fine boy. Rosa will be delighted with them.

Truly yours, EDWARD.

"EXHIBIT L."

Hermann Heller.

No. 37. PHILADELPHIA, June 19, 1879.

Manufacturers' National Bank,

Pay to the order of Schwed & Newhouse,

Three hundred and sixty-eight dollars and forty cents.

$368.40. H. HELLER.

"EXHIBIT K."

Hermann Heller.

No. 3681. PHILADELPHIA, June 7, 1879.

Manufacturers' National Bank,

Pay to the order of Schwed & Newhouse,

One thousand dollars.

$1,000. H. HELLER.

"EXHIBIT J."

Hermann Heller.

No. 3668. PHILADELPHIA, May 28, 1879.

Manufacturers' National Bank,
Pay to the order of Schwed & Newhouse,
One thousand dollars.

$1,000. H. HELLER.

"EXHIBIT H."

Hermann Heller.

No. 3661. PHILADELPHIA, May 23, 1879.

Manufacturers' National Bank,
Pay to the order of Schwed & Newhouse,
Two thousand dollars.

$2,000. H. HELLER.

"EXHIBIT G."

Hermann Heller.

No. 3504. Philadelphia, Feb'y 12, 1879.

Manufacturers' National Bank,
Pay to the order of Schwed & Newhouse,
Twenty-four hundred and fifty dollars, and forty cents.

$2,450,40. H. HELLER.

"EXHIBIT F."

Hermann Heller

No. 3500. Philadelphia, Feb'y 11, 1879.

Merchants' National Bank,
Pay to the order of Schwed & Newhouse,
Five hundred dollars.

$500. H. HELLER.

"EXHIBIT E."

Hermann Heller

No. 3144. PHILADELPHIA, Apl., 24, 1878.

Merchant's National Bank,
Pay to the order of Schwed & Newhouse,
Nineteen hundred and thirty-nine dollars and seventeen cents.

$1,939. 17. H. HELLER.

"EXHIBIT D."

Hermann Heller

No. 3062. PHILADELPHIA, Feb'y. 28, 1878.

Manufacturers' National Bank,
Pay to the order of Schwed & Newhouse,
Nine hundred and seventy-two dollars and sixty two cents.

$972.62. H. HELLER.

"EXHIBIT C."

Hermann Heller

No 2845. PHILADELPHIA, Sept, 7, 1877.

Pay to the order of Schwed & Newhouse,
Fourteen hundred and sixty-eight dollars and twenty five cents,

$1,468,25. H. HELLER.

"EXHIBIT B."

Hermann Heller

No. 2191. PHILADELPHIA, May 23, 1875

Pay to the order of Schwed & Newhouse,

Eleven hundred and four dollars and eighty-four cents.

$1,104.84. H. HELLER.

All of the above checks are indorsed by Schwed & Newhouse, and stamped paid with clearing-house stamp.

1876. Schwed and Newhouse in account with H. Heller.

May 23.	To Cash	$1,454 84.	Interest,	$ 45 16.	$1,500 00
1877.	"	1,408 25.	"	31 75.	1,500 00
Sept. 7.					
1878.	"	972 62.	"	27 38.	1,000 00
Feby. 28.					
April 24.	"	1,939 17.	"	60 83.	2,000 00
1879.	"	500 00.			
Feby. 11.					
" 12	"	2,450 43.	"	49 57.	3,000 00
May 23.	"	2,000 00			
" 28.	"	1,000 00			
June 3.	" Draft on H. Rosenthal	30 37			
" 7.	"	1,000 00			
" 9.	" Draft on F. A. Pilgrim	80 00			
" 19.	To Int., 6% on $5000 for six months	150 00			
" "	To Int. due on Loan $1000 at 6%	60 00			
" "	To Int. due on Loan $3000 at 7%	53 67			
" "	To Cash Note and Protest C. F. Kesselman	201 56			
" "	To Cash	308 40.		$5,000 00,	$14,000 00

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

Be it remembered, that heretofore, to-wit: at the October term, 1879, of the circuit court of Jackson county, Missouri, at Kansas City, and on the 74th day of said term, it being the 26th day of January, 1880, the following among other proceedings were had and made by said court, to-wit:

H. HELLER, *Plaintiff*,
vs.
EDWARD SCHWED and SIMON H. NEWHOUSE, partners by the name of Schwed & Newhouse, *Defendants*. } 4498.

Now, on this 26th day of January, A. D. 1880, comes the said H. Heller, plaintiff, and files in this court a petition against the defendants, Edward Schwed and Simon H. Newhouse, together with a power of attorney, duly executed and acknowledged by said defendants, Edward Schwed and Simon H. Newhouse, as required by deeds of land for record, by which power of attorney the said Edward Schwed and Simon H. Newhouse made, constituted and appointed Thomas V. Bryant, Esq., attorney at law, of Kansas City, Missouri, their true and lawful attorney to confess judgment for them, and in their names, and in favor of the said H. Heller, plaintiff, and in any court of competent jurisdiction, for the debt owing upon the note or bond in the petition and in said power of attorney described, said note or bond being also now filed in this court, together with the affidavit of the said H. Heller, plaintiff, that the debt evidenced by said note or bond, and described in said petition, power of attorney and affidavit, is bona fide, for a fair and valuable consideration, and owing, after allowing all just credits and set offs; and come also the said defendants, Edward Schwed and Simon H. Newhouse, by Thomas V. Bryant, Esq., their said attorney, and confess judgement herein in favor of H. Heller, the plaintiff, for the debt owing upon said note or bond for the sum of nine thousand five hundred and twelve dollars and fifty cents, ($9,512.50), and authorize judgment to be entered and rendered therefor against them, with legal interest thereon from this date; and the said Edward Schwed and Simon H. Newhouse, by their said attorney, the said Thomas V. Bryant, Esq., file herein their statement in writing, according to law, stating the amount for which the judgment may be rendered, and authorizing the entry of judgment thereon, and stating also that the said confession of judgment is for a debt owing by the said defendants to the said plaintiff upon the said note or bond so filed in this court as aforesaid. And the court being satisfied that the said debt is bona fide, for a fair and valuable consideration and owing upon said note and bond to the said plaintiff by the said defendants, after allowing all just credits and set offs, doth order and adjudge that the said H. Heller, plaintiff, have and recover of said defendants, Edward Schwed and Simon H. Newhouse, the said sum of nine thousand five hundred and twelve dollars and fifty cents ($9.512.50), for his debt, with interest from this date at the rate of six per cent. per annum, to gether with his costs and charges in this behalf expended, and have thereof execution. Plaintiff has leave to sue out execution forthwith.

Said petition is in the words and figures following, to-wit:

In the Jackson county circuit court, at Kansas City, Missouri, October term, A. D. 1879.

H. HELLER, *Plaintiff*,

against

EDWARD SCHWED and SIMON H. NEWHOUSE, partners by the name of Schwed & Newhouse, *Defendants*.

Plaintiff states that defendants are partners by the name of Schwed & Newhouse; that defendants are indebted to plaintiff in the sum of nine thousand dollars ($9,000.00), with interest at the rate of six per cent. per annum, from February 9th, 1879, on their certain note or bond, herewith filed, and which said note or bond is in words and figures following, to-wit:

$9,000.00 PITTSBURGH, February 8, 1879.

One day after date we promise to pay to the order of H. Heller nine thousand dollars, without defalcation, for value received, and we do hereby empower any attorney of any court of record within the United States or elsewhere, to appear for us and confess judgment against us as of any time for above sum, with costs of suit and costs of attorneys commission of per cent. and release of all errors, hereby waiving inquisition, and agreeing to condemnation of any property that may be levied upon by any execution which may issue forthwith, on failure to comply with the conditions hereof, without stay of execution; also hereby waiving the benefit of any exemption laws, or stay laws, or any act of assembly relative to executions now in force or hereafter to be passed.

Witness hand and seal.

SCHWED & NEWHOUSE, [L. S.]
EDWARD SCHWED, [SEAL.]
SIMON H. NEWHOUSE, [SEAL.]

Said sum of nine thousand dollars, with interest thereon at the rate of six per cent. per annum from February 9, 1879, are yet due plaintiff, and for which he asks judgment.

DAN'L B. HOLMES,
Attorney for plainiiff.

Said power of attorney is in the words and figures following, to-wit:

Whereas, we, Schwed & Newhouse, of the city of Pittsburgh, county of Allegheny, and state of Pennsylvania, composed of Edward Schwed and Simon H. Newhouse, are owing H. Heller, of Philadelphia, a debt upon a note, which said note is in words and figures following:

$9,000. PITTSBURGH, February 8th, 1879.

One day after date, we promise to pay to the order of H. Heller nine thousand dollars, without defalcation, value received, and we do hereby empower any attorney, of any court of record, within the United States or elsewhere, to appear for us and confess judgment against us, as of any term, for above sum,with cost of suit and costs of attorney's commission of —— per cent. and release of all errors, hereby waiving inquisition, and agreeing to condemnation of any property that may be levied upon by any execution which may issue forthwith, on failure to comply with the conditions hereof, without stay of execution; also hereby waiving the benefit of

any exemption laws, or stay law, or any act of assembly relative to executions now in force or hereafter to be passed.

Witness our hand and seal.

SCHWED & NEWHOUSE,
EDWARD SCHWED, [SEAL.]
SIMON H. NEWHOUSE. [SEAL.]

Now, therefore, these present witness that we hereby make, constitute, and appoint Thomas V. Bryant, Esq., attorney at law, Kansas City, Missouri, our true and lawful attorney to confess judgment for us and in our name in favor of H. Heller, for the debt owing upon said note, in any court of competent jurisdiction.

Witness our hand and seal this 15th day of January, 1880.

SCHWED & NEWHOUSE. [SEAL.]
EDWARD SCHWED. [SEAL.]
SIMON H. NEWHOUSE. [SEAL.]

STATE OF PENNSYLVANIA, }
County of Alleghany, } ss.
City of Pittsburgh, }

Be it remembered, that Edward Schwed, who is personally known to the undersigned, a notary public, within and for said county of Allegheny, to be the person who signed the firm name of Schwed & Newhouse (and his own name individually) to the foregoing deed, as a party thereto, this day appeared before me and acknowledged that he executed and delivered the same as the voluntary act and deed of the said firm of Schwed & Newhouse, and as their act and deed, as also his own act and deed, for the uses and purposes therein contained.

Given under my hand and official notarial seal, at my office in Pittsburgh, this fifteenth day of January, eighteen hundred and eighty.

JOSIAH COHEN, [SEAL.]
[SEAL.] Notary Public.

ALLEGHENY COUNTY, }
STATE OF PENNSYLVANIA, } ss.

I, Arch H. Rowand, Jr., Clerk of the Court of Quarter Sessions, in and for the county of Allegheny, in the commonwealth of Pennsylvania, the same being a court of law and record, do, by these presents certify that Josiah Cohen, Esquire, before whom the foregoing was taken, and who has hereunto, in his own and proper hand-writing, subscribed his name, was at that time and now is a notary public, in and for said county, duly commissioned and sworn, and authorized by law to take acknowledgements, administer oaths, etc., and to all whose acts as such due faith and credit are and of right ought to be given throughout the United States and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Pittsburgh, in said county, this 16th day of January, in the year of our Lord, one thousand eight hundred and eighty.

A. H. ROWAND, JR.,
[SEAL.] Clerk.

STATE OF MISSOURI, }
COUNTY OF JACKSON, } ss.

Be it remembered, that Simon H. Newhouse, who is personally known

to the undersigned, a notary public within and for said county of Jackson to be the same person whose name is subscribed to the foregoing deed as a party thereto, this day appeared before me and acknowledged that he executed and delivered the same as the voluntary act and deed of the firm of Schwed & Newhouse, and as his own voluntary act and deed, for the uses and purposes therein contained.

My notarial commission expires February 19, 1883.

Given under my hand and seal this January 20, 1880.

DAN'L B. HOLMES,
Notary Public.

[SEAL.]

Said affidavit is in the words and figures following, to wit:

STATE OF PENNSYLVANIA, }
County of } ss.
City of Philadelphia. }

Herman Heller, being first duly sworn, on oath says that the firm of Schwed and Newhouse, of Pittsburgh, Pennsylvania, and Kansas City, Mo., are indebted to him in the sum of nine thousand dollars, ($9,000) on a promissory note, of which the following is a copy:

$9,000. PITTSBURGH, February 8, 1879.

One day after date, we promise to pay to the order of H. Heller, Nine Thousand Dollars, without defalcation, value received; and we do hereby empower any attorney of any court of record within the United States or elsewhere, to appear for us and confess judgment against us as of any term for above sum, with costs of suit and costs of attorneys' commission of —— per cent., and release of all errors, hereby waiving inquisition and agreeing to condemnation of any property that may be levied on by any execution which may issue forthwith, on failure to comply with the condition hereof, without stays of execution; also, hereby waiving the benefit of any exemption laws, or stay laws, or any act of assembly relative to executions now in force or hereafter to be passed.

Witness hand and seal.

SCHWED & NEWHOUSE.
EDWARD SCHWED. [SEAL]
SIMON H. NEWHOUSE. [SEAL]

That the said debt is *bona fide*, for a fair and valuable consideration, and owing after allowing all just credits and set-offs.

H. HELLER.

Subscribed and sworn to before me, a notary public within and for said county of Philadelphia, this 17th day of January, A. D. 1880.

BENJ. F. TELLER,
Notary Public.

[SEAL]

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

I, William B. Mann, prothonotary of the court of common pleas of said county, do certify that Benj. F. Teller, Esq., before whom the annexed affidavit, was, at the time of so doing, a notary public duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments, &c., and to all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, said court being a court of record; and that I am well acquainted with

the hand-writing of the said Benj. F. Teller, and verily believe his signature thereto is genuine, and that said affidavit purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 17th day of January, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] WILLIAM B. MANN,
Prothonotary.

Said confession of judgment and statement is in the words and figures following:

In the Jackson County Circuit Court, at Kansas City, Missouri, October Term, A. D., 1879.

H. HELLER,
Planitiff.
vs.
EDWARD SCHWED AND SIMON H. NEWHOUSE, partners by the name of Schwed & Newhouse,
Defendants.

We, Edward Schwed and Simon H. Newhouse, partners by the name of Schwed & Newhouse, and defendants in the above entitled cause, by Thomas V. Bryant, our attorney in fact, do hereby confess judgment therein in favor of H. Heller, the plaintiff in the said action, for the sum of nine thousand five hundred and twelve and 50-100 dollars, ($9,512.50), and authorize judgment to be entered and rendered therefor against us with legal interest thereon from this date. This confession of judgment is for a debt owing to the said plaintiff by the said defendants, upon a note or bond which is in words and figures following, to-wit:

$9,000.00. PITTSBURGH, February 8th, 1879.

One day after date, we promise to pay to the order of H. Heller, nine thousand dollars, without defalcation, for value received, and we do hereby empower any attorney, of any court of record within the United States or elsewhere, to appear for us and confess judgment against us as of any term for above sum; with costs of suit and costs of attorney's commission of — per cent., and release of all errors, hereby waiving inquisition, and agreeing to condemnation of any property that may be levied upon, by any execution that may issue forthwith, on failure to comply with the conditions hereof, without stay of execution, also hereby waiving the benefit of any exemption laws or stay laws, or any act of assembly relative to executions now in force, or hereafter to be passed.

Witness hand and seal.

SCHWED & NEWHOUSE, [L. S.]
EDWARD SCHWED; [SEAL.]
SIMON H. NEWHOUSE. [SEAL.]

The power of attorney of the said Schwed and Newhouse, and of the said Edward Schwed, and of the said Simon H. Newhouse, authorizing this confession of judgment, acknowledged as required of deeds of land for record, together with the said note or bond and the affidavit of the said H. Heller, plaintiff, that the said debt is *bona fide*, for a fair and valuable

consideration and owing, after allowing all just credits and set-offs, are herewith filed.

EDWARD SCHWED,
By THOMAS V. BRYANT,
his attorney in fact.
SIMON H. NEWHOUSE,
By THOMAS V. BRYANT,
his attorney in fact.

Said execution is in the words and figures following, to-wit:

The State of Missouri, to the Sheriff of Jackson County, greeting:

Whereas, H. Heller, on the 26th day of January, in the year eighteen hundred and eighty, at our Circuit Court of Jackson County, at Kansas City, hath recovered against Edward Schwed and Simon H. Newhouse, the sum of nine thousand five hundred and twelve 50-100 dollars, which to the said H. Heller was adjudged as aforesaid, and also for his costs.

These are therefore to command you, that of the goods, chattels and real-estate of the said Edward Schwed and Simon H. Newhouse, you cause to be made the sum aforesaid adjudged against them, together with the costs, and that you have the same before the judge of our said court. on the first day of the next April term thereof, to satisfy the sum and costs aforesaid, and that you certify how you execute this writ.

Witness Wallace Laws, clerk of our said circuit court, with the seal thereof hereto affixed, at office in Kansas City, this 26th day of January, 1880.

[SEAL.]

WALLACE LAWS,
Clerk,
By SAM S. RALLS, D. C.

Said execution is endorsed on the reverse thereof, as follows, to-wit:

4498.
EXECUTION.
Issued January 26, A. D. 1880.
Returnable April Term, 1880.
H. HELLER
vs.
EDWARD SCHWED and SIMON H. NEWHOUSE.
Debt, $9,512.50. Interest 6 per cent.
Clerk Laws, $2.90.
D. B. HOLMES,
Plaintiff's Attorney.
Record K. Page 526.
Execution Doc. C. Page 133.

Clerk's cost.—Pet. 5; power att'y, 5; note, 5; aff. 5; doc. 5; app, 10; Jno. 50; jud. doc. 20; abst. 25; sat. 25; ord. exu. 35; execution, 1.00, - $2.90

Received this writ, Jan. 26, 1880.

O. P. W. BAILEY, Sheriff,
By JOS. M. GDEEN, Deputy.

Executed this writ on the 17th day of February, 1880, by garnishing Lewis Zahl, C. E. Russell, T. J. Turner and J. A. Chopard, by delivering

to each of them a notice of such garnishment; a copy of which notice is hereto attached.

Done in Jackson county, Missouri.

O. P. W. BAILEY, Sheriff,
By Jos. M. GREEN, Deputy.

Fee, $4.00.

Said notice of garnishment is in the words and figures following, to-wit:

H. HELLER,
Plaintiff
vs.
EDWARD SCHWED and
SIMON H. NEWHOUSE,
Defendants.

In the Circuit Court at Kansas City, Mo.
April Term, 1880.

To Louis Zahl, C. E. Russell, T. J. Turner, J. A. Chopard, garnishee: You are hereby notified that I attach in your hands all debts due by you to the above named defendants, Edward Schwed and Simon H. Newhouse, together with all personal property, money, rights, credits, bonds, bills, notes, drafts, checks, or other choses in action, of the said defendants, in your possession, or charge, or under your control at the time of the service of this garnishment, or which may come into your possession, or charge, or under your control, or be owing by you between that time and the time of filing your answer, or so much thereof as will satisfy the sum of nine thousand five hundred twelve and 50-100 dollars, with interest and cost of suit, and you are hereby summoned to be and appear before the circuit court of Jackson county, at Kansas City, on the first day of the next term thereof, it being the 12th day of April, A. D. 1880, then and there to answer such allegations and interrogatories as may be exhibited by H. Heller, the above named plaintiff.

Given under my hand, at office in Kansas City, Mo., this 17th day of April, 1880.

O. P. W. BAILEY, Sheriff.
By Jos. M. GREEN, Deputy.

And afterwards, to-wit: At the said October term, 1879, of said court, and on the eighty-third day of said term, the same being the 14th day of February, 1880, the following further proceedings were had and made herein, to-wit:

H. HELLER,
vs.
EDWARD SCHWED *et al.*
- 4498.

Now, at this day, by their attorneys, come William Smith, John Smith, and O. C. Lenz, under their firm name of William Smith & Co., and William C. Greene, B. W. Greene and George D. Briggs, under their firm name of William C. Greene & Co., attaching creditors of defendants, and file their motion to set aside the judgment and quash the execution herein.

Said motion is in words and figures, following, to-wit :

H. HELLER,
Plaintiff,
vs.
EDWARD SCHWED and SIMON H. NEWHOUSE, under their firm name of Schwed & Newhouse,
Defendants.

In the Circuit Court of Jackson county, Missouri, at Kansas City, at the October Term, A. D. 1879.

Motion to set aside and vacate the judgment and to quash the execution issued thereon.

Now, at this day come William Smith, John Smith and O. C. Lenz, under their firm name of William Smith & Co., and William C. Greene, B. W. Greene and George D. Briggs, under their firm name of William C. Greene & Co., and attaching creditors in this court of said defendants, Edward Schwed and Simon H. Newhouse, under their said firm name of Schwed & Newhouse, and move the court here for an order vacating and setting aside the judgment confessed by the said defendants, Edward Schwed and Simon H. Newhouse, under the said firm name, in favor of said plaintiff, H. Heller, and entered on the 26th day of January, A. D. 1880, at said October term of said circuit court, and that the execution issued on said judgment, on said 26th day of January, A. D. 1880, and all proceedings under it be quashed, vacated and set aside, so far as they relate to or effect the property of said Schwed & Newhouse, levied upon and seized under said execution, and that all said personal property be made and declared to be freed and discharged of and from any apparent lien of said judgment and from and of any and every and all proceedings, whatsoever, under and by virtue of the same. Said personal property being the same now in the store-house formerly occupied by said Schwed & Newhouse and numbered five hundred and twenty (520) Delaware street, Kansas City, Missouri, in the possession of the sheriff of the said county of Jackson, under said execution, and consisting of gold and silver watches and jewelry, clocks and clock and watch materials and tools, and being the same property seized and levied upon by said sheriff on the 12th day of February, A. D. 1880, as the property of the said Schwed & Newhouse, under and by virtue of two several writs of attachment issued out of this court, and in two certain causes of attachment now pending herein, in favor of the said William Smith & Co., as attaching creditors, and the said William C. Greene & Co., as attaching creditors, and against said Schwed & Newhouse, as defendants herein.

And they allege the following grounds in support of said motion :

First. The said judgment by confession was irregularly and erroniously and improvidently entered by said plaintiffs without said plaintiffs filing in said court at the time said judgment was rendered and entered, any statement in writing signed by said defendants, or either of them, verified by their affidavit thereto, or of any person for them, showing the amount for which said judgment might be rendered, nor was any statement of said defendants, or either of them, verified by like affidavit and signed by said defendants, or either of them, or any person for them, filed in said court at the time of the rendition of said judgment, or at any

other time, stating facts out of which said indebtedness upon which said judgment was confessed, and showing that the sum attempted to be confessed therefor was justly due or to become due.

Second. The statement filed in said cause is not signed by said defendants or either of them, neither is it verified by the affidavit of said defendants or either of them, or of any person for them or in their behalf; neither does it state concisely, or in any manner whatever, the facts out of which the indebtedness therein mentioned and for which said judgment was erroniously confessed and entered arose; neither does it state that said indebtedness is justly due or to become due as required by law, and is defective and insufficient to authorizing any judgment whatever to be rendered in said cause.

Third. The verified statement of said plaintiff Heller in said action upon which said judgment was rendered and procured, is defective and insufficient to authorize said judgment because it fails to show in any manner the facts out of which said indebtedness arose, or the consideration for said bond or note upon which said judgment was so erroniously confessed.

Fourth. That the warrant of attorney of said Schwed & Newhouse, upon which said judgment was so erroniously confessed and rendered, does not set forth the consideration for the debt, or the bond upon which said judgment was rendered; nor does it state any facts out of which said pretended indebtedness arose, and is defective and insufficient to warrant and authorize said confession of judgment.

Fifth. Because the applicants herein are attaching creditors of the said Edward Schwed and Simon H. Newhouse, under the said firm name of Schwed & Newhouse, which attachments were levied upon said property subsequent to the issue and levy of the said execution, and said property is and was at the time of the said levy of said execution and attachments, the partnership property of the said Schwed and Newhouse.

Sixth. Because said confession of judgment is otherwise defective, informal, erronious, and oppressive to said applicants as such attaching creditors.

SCARRITT & RIGGINS, and
BOTSFORD & WILLIAMS,
For Applicants.

And afterwards, to-wit, on the same day, the following further proceedings were had herein, to-wit:

H. HELLER,
vs. } 4498.
EDWARD SCHWED, *et al.*

Now, at this day, comes plaintiff and William Smith, John Smith and O. C. Lenz, under the firm name of William Smith & Company and William C. Greene, B. W. Greene and George D. Briggs, under their firm name of William C. Greene & Company, attaching creditors of defendants, by their respective attorneys, and upon the application of said attaching creditors, it is ordered by court, that the sheriff of Jackson county be and he is hereby directed and ordered to adjourn from day to day until Wednesday, February 18th, A. D. 1880, at 11 o'clock, a. m., the sale of the property levied upon under the execution herein.

And afterwards, to-wit, at said October term, 1879, of said court, and on the 88th day of said term, the same being the 20th day of Feb-

ruary, 1880, the following further proceedings were had and made by said court, herein, to-wit :

H. HELLER,
vs.
EDWARD SCHWED and SIMON H. NEWHOUSE, partners by the name of Schwed & House. } 4498.

Now, at this day come, by their respective attorneys, said plaintiff H. Heller and said William Smith, John Smith and O. C. Lenz, under their firm name of William Smith & Company, and William C. Greene, B. W. Greene and George D. Briggs, under their firm name of William C. Greene & Company, attaching creditors of defendants, and the motion of attaching creditors to set aside judgment and quash execution herein being submitted to the court and fully heard, is by the court overruled and adjudged that said attaching creditors take nothing by reason of their said motion and said attaching creditors except to the ruling of the court thereon.

And afterwards, to-wit, at said October term, 1879, of said court, and on the 90th day of said term, it being the 27th day of February, 1880, the following further proceedings were had and made by said court herein, to-wit:

H. HELLER,
vs.
EDWARD SCHWED and SIMON H. NEWHOUSE, partners by the name of Schwed & Newhouse. } 4498.

Now, at this day, comes plaintiff, by attorney, and come by their attorneys, William Smith, John Smith and O. C. Lenz, under their firm name of William Smith & Company, and William C. Greene, B. W. Greene and George D. Briggs, under their firm name of William C. Greene & Company, attaching creditors of said defendants, and said attaching creditors file their motion for a new trial of their motion to set aside the judgment and quash the execution herein, which motion for a new trial as aforesaid by consent of parties, is now submitted to the court and fully heard and the court overrules said motion and said attaching creditors except to the ruling of the court, and tender to the court their bill of exceptions, which is by the court allowed, signed and sealed and ordered to be filed and made a part of the record herein.

Said motion for a new trial is in the words and figures following, to-wit:

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, composing the firm of William Smith & Co., and
WILLIAM C. GREENE, BYRON W. GREENE and GEORGE D. BRIGGS, composing the firm of William C. Greene & Co., *The Plaintiffs.*
vs.
H. HELLER,
EDWARD SCHWED, and SIMON H. NEWHOUSE, composing the firm of Schwed & Newhouse, *The Defendants.*

In the Circuit Court of Jackson, County, Missouri, sitting at Kansas City, October Term, 1879.

And, now comes said attaching creditors, William Smith, John Smith, O. C. Lenz, William C. Greene, Byron W. Greene, and George D. Briggs, and move the court to set aside its order overruling the motion of said attaching creditors to set aside the judgement and to quash the execution rendered and issued in favor of said H. Heller and against said Schwed and Newhouse, and to grant said attaching creditors new trial of said motion for the following reasons, viz.:

First. Said motion for the reasons therein stated should have been sustained, and the court erred in overruling the same.

Second. On the whole case the judgment of the court on said motion should have been in favor of said attaching creditors and against said Heller.

SCARRITT & RIGGINS, and
BOTSFORD & WILLIAMS,
For said attaching creditors.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

I, Wallace Laws, clerk of the circuit court within and for the county and state aforesaid, at Kansas City, do certify that the foregoing is a full, true and complete transcript of the record and proceedings in a case lately pending in said court, wherein H. Heller *et al.* were plaintiffs and Edward Schwed *et al.* were defendants, as the same now appears of record and on file in my office, the bill of exceptions excepted.

Witness, Wallace Laws, Clerk of said Circuit Court, with the seal thereof hereto affixed, at office in Kansas City, this 19th day of May, 1881.

WALLACE LAWS,
Clerk.

[SEAL.]

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

We, Samuel H. Woodson and Francis M. Black, Judges of the Circuit Court of the 24th judicial circuit of the state of Missouri, composed of Jackson county, do hereby certify that Wallace Laws, whose genuine signature appears to the foregoing certificate, is now, and was at the date of signing same, clerk of said court, and that to all his official acts as such, due faith and credit ought to be given, and that said attestation is in due form.

Witness our hands, this 19th day of May, 1881.

S. H. WOODSON,
FRANCIS M. BLACK,
Judges of the 24th Judicial Circuit of the State of Missouri.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON, }

I, Wallace Laws, Clerk Circuit Court within and for the county and state aforesaid, at Kansas City, do certify that Samuel H. Woodson and Francis M. Black, whose genuine signatures appear to the foregoing certificate, are now, and were at the date of signing the same, judges of the circuit court of the 24th judicial circuit of the state of Missouri, and that to all their official acts as such, due faith and credit ought to be given.

Witness, Wallace Laws, Clerk of said Circuit Court, with the seal thereof hereto affixed, at office in Kansas City, this 19th day of May, 1881.

WALLACE LAWS,
[SEAL.] Clerk.

Upon the back of this paper appears the following, viz.:

H. Heller,
vs.
Schwed *et al.*
Transcript.

EXEMPLIFICATION OF RECORD.

COMMONWEALTH OF PENNSYLVANIA. } Set.
ALLEGHENY COUNTY, }

Among the records and proceedings of the Court of Common Pleas, No. 1, in and for the county of Allegheny, and state of Pennsylvania, the following may be found as matter of file and of record, at No. 138, March term, 1880, to wit: D. S. B.

APPEARANCE DOCKET ENTRY. D. S. B.

H. HELLER, 138 *vs.* Narr — D. S. B. $5,009.33. Interest from Dec. 24, 1879.

E. SCHWED AND S. H. NEWHOUSE, partners as Schwed & Newhouse. — To Fi Fa. No. 169. March Term, 1880.

And now, January 26, 1880, comes J. Cohen, Esq., who, upon warrant of attorney filed, appears for defendants, and confesses judgment against them for the sum of five thousand and nine dollars and thirty-three cents, with costs of suit and att'y's com. of 5 per cent., waiving inq., cond. and expt.

J. O. BROWN, Pro.

JUDGMENT DOCKET ENTRY.

	Defendant.	Plaintiff.	No.	Term.	Year.	Date of Judg't.	Amount.
D. S. B.	Schwed, E.	H. Heller.	138	March.	1880	Jan'y 26, 1880.	$5,009.33
	Newhouse, S. H.	H. Heller.	138	March.	1880	Jan'y 26, 1880.	5,009.33

ALLEGHENY COUNTY, ss.

H. Heller vs. Edward Schwed & S. H. Newhouse, partners as Schwed & Newhouse.

No. . . . of March term, 1880.

E. Schwed and S. H. Newhouse, partners as Schwed & Newhouse, of said County, yeomen, were summoned to answer H. Heller of a plea that he render unto the said H. Heller Five thousand and nine $\frac{33}{100}$ dollars, lawful money of the United States, which to him he owes and unjustly detains &c.

And whereupon the said Herman Heller by Josiah Cohen, his attorney, complain for that whereas the said defendant heretofore, to-wit, on the 22d day of December, in the year of our Lord, one thousand eight hundred and seventy nine, at Pittsburgh, to-wit, in the County aforesaid, by his certain

written bond or promissory note under his hand and seal, had promised to pay unto the said plaintiff the aforesaid sum of five thousand and nine and $\frac{33}{100}$ dollars in any one day after the date thereof.

Nevertheless the said defendant, although often required the aforesaid sum of money or any part thereof, to the said plaintiff yet have not paid, but the same to him to pay hitherto have altogether refused, and still do refuse. Whereupon the said plaintiff says he is worse, and have damage to the value of Eleven thousand dollars, and therefore he brings suit &c. And brings here into Court the note aforesaid, which the debt aforesaid, in form aforesaid, doth say testify, the date whereof is the date and year aforesaid.

(Signed) J. COHEN,
Attorney for Plaintiff.

ALLEGHENY COUNTY, SCT.

By virtue of the annexed power of Attorney, I appear for the defendant above named, and confess a judgemnt against them in the sum of Five thousand and nine $\frac{33}{100}$ dollars, as debt and interest from December 24, 1879, and attorney's fees for collection of five per cent not liquidated in above amount with costs of suit, and hereby waiving inquisition and agreeing to condemnation and sale of any and all property which may be levied upon by virtue of any execution issued hereon, and also waiving and releasing the right of exemption from levy and sale of any and all property, and waiving stay of execution, and with a release of all errors.

(Signed) J. COHEN,
Attorney for Defendant.

Pgh., Jan. 24, 1880.

(Attached to the above is the following copy of the note.)

5,009 $\frac{33}{100}$ (copy) PITTSBURGH, Dec. 22, 1879.

One day after date we promise to pay to the order of H. Heller Five thousand and nine $\frac{33}{100}$ dollars without defalcation, for value received, and we do hereby empower any attorney of any Court of record within the United States or elsewhere, to appear for us and confess judgment against us as of any term for above sum, with costs of suit and costs of attorney's commission of 5 per cent, and release of all errors; hereby waiving inquisition and agreeing to condemnation of any property that may be levied upon by any execution which may issue forthwith on failure to comply with the conditions hereof, without stay of execution; also hereby waiving the benefit of any Exemption Laws, or Stay Laws, or any act of the Assembly relative to execution now in force or hereafter to be passed.

Witness hand and seal. (Signed,) [Seal]
SCHWED & NEWHOUSE. [Seal]

STATE OF PENNSYLVANIA, COUNTY OF ALLEGHENY, CITY OF PITTSBURGH. } ss.

A. Israel, being duly sworn according to law, doth depose and say that the within note is a true and correct copy of the original note, as also the warrant thereon (in said note contained).

(Signed.) A. ISRAEL.

Sworn to and subscribed before me this 26th day of January, 1880.

[SEAL] (Signed) A. V. D. WATTERSON,
Notary Public.

No. 138, D. S. B. Mch. T., 1880.

H. Heller
vs.
E. Schwed and C. H. Newhouse,
partners as Schwed & Newhouse.

Issue *Fi. Fa.* against defendants returnable next return day.

(Signed) J. COHEN,
Plaintiff's Attorney.

To J. O. Brown, January, 26, 1880.—Pro.

ALLEGHENY COUNTY, ss.

The Commonwealth of Pennsylvania,

[SEAL] To the Sheriff of the County of Allegheny, GREETINGS: WE COMMAND YOU, That of the goods, chattles, lands and tenements of E. Schwed and S. H. Newhouse, late of your County, in your bailiwick, you cause to be levied and made the sum of Five thousand and $\frac{33}{100}$ Dollars, lawful money of Pennsylvania, which H. Heller lately in our Court of Common Pleas. No. 1, before our Judges at Pittsburgh, recovered against them of debt, and also One Hundred Dollars, which in our said Court was adjudged to the said plaintiff for the damages which he sustained, as well as by occasion of the detention of that debt as for the costs and charges by him about his suit in that behalf expended, whereof the said defendants are convict, as appears to us of record. And have you that money before our Judges at Pittsburgh, at our Court of Common Pleas, No. 1, there to be held for the County aforesaid the first Monday of March next, to render to the said plaintiff the debt, interest and costs, and charges aforesaid. And have you then and there this writ.

WITNESS, The Hon. Edwin H. Stowe, President of the said Court at Pit sburgh, this 26th day of January, in the year of our Lord one thousand eight hundred and eighty. (Signed) J. O. BROWN,
Prothonotary.

(On the back of the above *Fi. Fa.* appears the following:)

Levy made January 26, 1880, on personal property defts., at their place of business, Wood St. and 5th Avenue, as per levy answered. Advertised same for sale for Tuesday, February 3, 1880, at 10 o'clock A. M., on the premises, and then sold the same for the sum of $3,613.13, which sum have applied as follows, to-wit:—

To costs in this writ	$ 322 55
To debt on account of this writ	3,290 58
	$ 3,613 13

So answer, T. H. HUNTER,
Sheriff.

No. 169, March Term, 1880.
H. Heller
vs.
E. Schwed and S. H. Newhouse,
Partners as Schwed & Newhouse.
Fi fa. No. 138 March term, 1880.
D. S. B. Penalty, $————
Debt $5,009 33
Int. from Dec. 24, 1879 .

Atty	$ 5 25
Pro	2 00
Sh'ff H	45 20
" M	1 50
Att's com. 5 per cent	180 60
Clerk	10 00
Insurance	24 00
Watchman F	27 00
Watchman H	27 00
	$322 55

(Signed) E. COHEN.
Rec'd at 12:10 o'clock, P. M.
Jan'y 26, 1880.

. . . . . .

93

. . . . . .

Inq. cond. & Exmp. waived.

IN THE
COURT OF COMMON PLEAS No. 1 OF ALLEGHENY CO., PA.

H. Heller
vs
Edward Schwed and
S. H. Newhouse,
Partners as Schwed & Newhouse.

Fi fa. No. 169, March term, A. D. 1880.

By virtue of the above stated writ, to me directed, I have this 26th day of January, A. D. 1880, levied upon Personal property of Defts. at their place of business Corner of 5th Ave. & Wood St., Pgh. Two safes and contents, a large lot of clocks, a lot of watchmaker's tools, 1 desk and 4 tables, 3 chairs, a lot of shelving, etc., etc., etc. So answers THOS. H HUNTER,
Sheriff.

EXECUTION DOCKET ENTRY.

January 26, 1880.

H. Heller.

169. vs.

E. Schwed and S. H. Newhouse,

Partners

As Schwed & Newhouse.

Inq. Cond. and Exemp. waived.

Fi. Fa. Sur No. 138 March Term 1880.

Real Debt	$5,009 33
Int. from Dec. 24, 1879.	
Atty	5.25
Pro. B.	2.00
Shff H.	45.20
" " M.	1.50
Atty com 5%	180.60
Clerk	10.00
Insurance	24.00
Watchman F	27 00
" K	27.00
	322.55

Levy made January 26, 1880, on personal property of defendants at their place of business, Wood street and 5th avenue, as per levy annexed. Adv. same for sale for Tuesday, Feb. 3, 1880, at 10 o'clock A. M. on

the premises, and then sold the same for the sum of $3,613.13, which sum have applied as follows, to-wit:

To costs on this writ . . . . . $ 322.55
" debt on acc't this writ 3,290.58

$3.613.13

So answers
THOS. H. HUNTER,
Shff.

COMMONWEALTH OF PENNSYLVANIA, } ss.
ALLEGHENY COUNTY. }

I, J. O. Brown, Prothonotary of the Court of Common Pleas, No. 1, in and for said County, certify that the foregoing is a full and correct copy of the whole record of the case therein stated, wherein H. Heller is Plaintiff and Schwed & Newhouse are Defendants as the same remains of record before the said Court at No 138 of March Term, A. D. 1880, D.S.B.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court, the 7th day of February, A. D. 1881.

[SEAL] (Signed) J. O. BROWN,
Prothonotary.

COMMONWEALTH OF PENNSYLVANIA, } ss.
ALLEGHENY COUNTY. }

I, Edwin H. Stowe, President Judge of the Court of Common Pleas, No. 1, in and for said County, certify that J. O. Brown, by whom the above attestation was made, was at the date thereof, Prothonotary of said Court, duly qualified, and the said attestation is in due form of law, and made by the proper officer.

Witness my hand and seal the 7th day of February, A. D. 1881.

[SEAL] EDWIN H. STOWE. [SEAL]

ALLEGHENY COUNTY, ss.

I, J. O. Brown, Prothonotary of the Court of Common Pleas, No. one for said County, certify that Hon. Edwin H. Stowe, Esq., by whom the above certificate was given, and whose name is thereby subscribed in his own proper handwriting, was, at the date thereof, President Judge of the said Court, duly commissioned and sworn, and acting.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court the 7th day of February, 1881. (Signed)

[SEAL.] J. O. BROWN, Prothonotary.

February 7, 1881. Received of J. S. Botsford, three dollars for this certified copy of the Record. (Signed) J. O. BROWN, Pro.

And afterwards, to wit: at the October term, A. D. 1881, the following agreement of counsel was filed and recorded in the order book of date November 5, 1881, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

WM. SMITH *et al.*,
Complainants,
vs.
EDWARD SCHWED *et al.*,
Defendants.

It is agreed betweeen the complainants, Wm. Smith & Co., Wm. C. Greene & Co., The Seth Thomas Clock Co., E. N. Welch Manufacturing

Co., and Thomas Quaile, and the defendants, Edward Schwed, Simon H. Newhouse, H. Heller and O. P. W. Bailey, as follows:

1. That the sum of $8,254.28, after deducting all costs therefrom to which defendant Bailey is entitled pursuant to his itemized bill to be hereto attached, realized from the sale under order of the Jackson County Circuit Court, of the stock of goods levied on under the writ of execution in favor of defendant Heller, and the several writs of attachment in favor of the complainants, be paid into Registry of this Court for the better preservation thereof, and in order to relieve the defendant Bailey from any further responsibility by reason of the same and custody thereof.

2. That this stipulation and any act under it shall in no wise be held or construed to in any manner effect the determination of any question or thing now pending, or which may hereafter arise in this cause, but the rights of the parties shall be preserved and maintained in the same as if this stipulation had not been made, and the said sum of money had been received allowed to remain in the hands of said Bailey.

(Signed) SCARRETT & RIGGINS and
TICHENOR & WARNER, BOTSFORD & WILLIAMS
and BRYANT & HOLMES, for Plaintiff.
for Defendants.

And afterwards, to-wit: on the 2d day of January, 1882, the following entry appears on the order book, to-wit:

WM. SMITH *et al.*
against
EDWARD SCHWED *et al.*

This day come the parties by their attorneys and file motion for an attachment for contempt against O. P. W. Bailey, one of the defendants herein. And said motion is in form as follows, to-wit:

In the U. S. Circuit Court, Western Division of the Western District of Missouri.

WILLIAM SMITH *et al.*, *Plaintiffs,*
vs.
EDWARD SCHWED *et al.*, *Defendants.*

And now comes the plaintiffs and defendants, Schwed, Newhouse and Heller and show to the court that defendant, Bailey, has utterly failed and refused to obey the order of this Court herein made November 5, 1881, to deposit in the registry of this Court the fund of $8,254 28, now in his hands.

Wherefore, plaintiffs pray that said Bailey may be attached and imprisoned for contempt in disobeying the order aforesaid, and that he be otherwise dealt with according to law.

(Signed) BOTSFORD & WILLIAMS, AND
SCARRETT & RIGGINS,
for Plaintiffs.

BRYANT & HOLMES AND
TICHENOR & WARNER, for defendants, Schwed, Newhouse and Heller.

And afterwards, to-wit, in vacation, the following entry appears on the order book of date January 9, 1882, to-wit:

WM. SMITH *et al.*
against
EDWARD SCHWED *et al*

Upon reading and filing the motion for attachment against defendant, O. P. W. Bailey, it is ordered that said Bailey show cause at the February adjournment of this court why he should not be attached for the contempt of this court set forth in the motion, and afterwards, to wit, in vacation, the following entry appears on the order book of date, January 19, 1882, to-wit:

WM. SMITH *et al.*
vs.
EDWARD SCHWED *et al.*

This day comes the defendant, O. P. W. Bailey, and reports to the court that he has paid into the registry of this court, the sum of seven thousand, four hundred and five dollars and fifty-five cents, ($7,405,55), and in pursuance of the order of this court.

Which said report being filed, is in words and figures as follows, to wit:

In the Circuit Court of Jackson county at Kansas City, Missouri. Attachment.

Wm. C. GREEN *et al.* & WM. SMITH *et al.*, Plaintiffs,
vs.
EDWARD SCHWED *et al.*, Defendants.

SHERIFF DR.

To amount realized from sale of stock of jewelry etc., of defendants Edward Schwed *et al.* . . . . . $8,254.28.

SHERIFF CR.

By *non est* return and writs served.	$ 6 00	
" 7 levies made on stock.	7 00	
" Inventory and appraisement made	50 00	
" C. B. Medel, repairing safe	10 00	
" Louis Dragon, rent of store room	50 00	
" Removing stock from store to court house	20 00	
" Kinney & Co., insurance	6 00	
" P. H. Tiernan, printing bills etc.	20 00	
" Guarding, care, and keeping stock forty-three days and nights at $5 co per day and night	215 00	
" Commission on sales	170 08	
" W. O. Thomas, clerk, five days, at $3	15 00	
" Geo. H. Clark auctioneer pr. agreement	150 00	
" Cash paid Mr. Cady, taking inventory	20 00	
" Thomas H. Sayre, rent of store	2 00	
" Cash paid for coal and watchman.	14 75	
" Wallace Laws, clerk	64 90	
" " " Plaintiff's costs.	28 00	846 73
By cash paid into court		5,000 00
Balance in hands of sheriff		2,405 55

O. P. W. BAILEY,
Late sheriff Jackson County, Mo.

And on the 29th day of July, A. D. 1882, the following application and order were filed in said court, to-wit:

LAW OFFICE OF BRYANT & HOLMES,
KANSAS CITY July 27, 1882.

HON. GEO. W. MCCRARY.

DEAR SIR: In the matter of Wm. Smith, *et al.*, *vs.* Edward Schwed, *et al.*, decided by you and appealed to the United States Supreme Court, both sides desire that the original Exhibits 14, 15 and 18, attached to the deposition of witness, Schwed, should go up with the transcript for inspection of the Supreme Court We have prepared the enclosed order for that purpose under sub-division 4, Rule 8, of Rules of Supreme Court, U. S., which we would be greatly pleased to have you make and forward to the clerk here.

Very respectfully,
BRYANT & HOLMES, for Applicants.
BOTSFORD & WILLIAMS, for Respondents.

And said order is as follows, to-wit:—

In the United States Circuit Court, within and for the Western Division of the Western District of the State of Missouri.

WILLIAM SMITH *et al.*
vs.
EDWARD SCHWED *et al.*

It being proper in the opinion of the presiding Judge of this Court that the original papers attached to the deposition of Edward Schwed, taken at Pittsburgh, Pennsylvania, marked "Exhibit 14," "Exhibit 15," and "Exhibit 18," should be inspected in the Supreme Court of the United States, upon the appeal in the above entitled cause; and it being agreed and stipulated by the parties in this cause that said Exhibits 14, 15, and 18 may be inspected, read, and considered by the Supreme Court of the United States, the same as if said Exhibits were copied into the transcript of the record herein, it is ordered that the Clerk of this Court transmit said Exhibits, along with said transcript, by express to the Clerk of the Supreme Court of the United States, to be by said Clerk safely kept until the determination of the appeal herein by the Supreme Court of the United States, and then returned by said Clerk, by express, to the Clerk of this Court.

(Signed) GEO. W. MCCRARY, Circuit Judge.

And the decisions rendered by the court and filed in said cause are as follows, to-wit:

Smith and others
v.
Schwed and others.

(*Western District of Missouri.* ——, 1881.)

In equity. Motion to dissolve injunction.

It is provided by statute in Missouri that "any attaching creditor may maintain an action for the purpose of setting aside any fraudulent conveyance, assignment, charge, lien or incumbrance of or upon any property attached in any action instituted by him." The cause was removed by complainants.

Bryant & Holmes and Tichenor & Warner, for motion.

Botsford & Williams and Scarritt & Riggins, *contra.*

McCRARY, Circuit Judge.—The complainants, who are creditors of the firm of Schwed & Newhouse, merchants in Kansas City, Missouri, filed their bill in the Circuit Court of Jackson County, Missouri, praying that a certain judgment confessed by said Schwed & Newhouse in that court in favor of one H. Heller, of Philadelphia, Pennsylvania, for $9,572, rendered on the twenty sixth day of January, 1880, be cancelled and set aside.

The bill charges that the said judgment was fraudulent, and was confessed for the purpose and with intent to defraud, hinder and delay the *bona fide* creditors of Schwed & Newhouse, who were not indebted to said Heller in said sum of $9,500, or any other sum, at the time of the fraudulent confession, but that said judgment was confessed without any consideration, and for the purpose aforesaid.

It is further alleged that execution has been issued upon said judgment and levied upon the only property of said Schwed & Newhouse within the State of Missouri, to-wit, a stock of watches and jewelry, and that attachments in favor of plaintiffs have been levied upon the same property. After the filing of the bill in the state court, and after all the defendants had appeared, a motion for a temporary injunction to restrain the execution of said judgment was heard by that court, and an injunction allowed to remain in force until a final hearing of the cause. Afterwards the cause was removed to this court. The defendants here move to dissolve the injunction granted by the state court upon grounds which will now be considered.

1. It is said that the bill is not verified according to law and the practice of courts of chancery. It is to be presumed that all questions relating to the form and sufficiency of the bill, and of the verification thereof, were considered and decided by the state court upon the hearing before that tribunal of the motion for an injunction, and that the affidavit was held to be good and sufficient under the state law. Whether that ruling was correct or not I will not inquire, because this court is not called upon to review the orders and ruling made by the state court in the progress of the cause before the removal. In the case of *Dungan* v. *Gegan*, 101 U. S. 810, the supreme court, by Waite, C. J., laid down the rule upon this subject as follows: "The transfer of the suit from the state court to the circuit court did not vacate what had been done in the state court previous to the removal. The circuit court, when a transfer is effected, takes the case in the condition it was when the state court was deprived of its jurisdiction. The circuit court has no more power over what was done before the removal than the state court would have had if the suit had remained there. It takes the case up where the state court left it off." In view of this authority, I am disposed to consider the question of the sufficiency of the verification of the bill as disposed of by the action of the state court. No doubt this court may, upon proper showing, in a case removed, vacate or modify an injunction allowed in the case by the state court, and before removal; but such an order should not be made as the result of the consideration of any question of pleadings or practice decided by the state court before it was deprived of jurisdiction.

2. It is insisted that the injunction should be dissolved because there is no allegation that Heller, the plaintiff in the confessed judgment, is insolvent. It is said that, if he be solvent, the complainants herein have an adequate remedy at law, in case he enforces his judgment, and thereby de-

prives them of the means of collecting their claims against Schwed & Newhouse. The complainants have a lien by attachment upon certain property, and they aver that, by means of a fraudulent judgment, the defendants Heller and Schwed & Newhouse have conspired together to take said property, thereby depriving complainants of the means of enforcing their lien. If these allegations be true, the complainants are entitled to the relief sought without alleging the insolvency of Heller. They have the right to hold their liens upon the property of their debtor, and to enforce the same as against any fraudulent claims or liens attempted to be set up by third parties, whether such third parties are solvent or insolvent. They are not bound to submit to the enforcement of a fraudulent and void judgment against said property, and the defeat thereby of their attachment liens upon it, even though such judgment may be held by a person who is able to respond in damages. The holder of a fraudulent and void judgment cannot be permitted to enforce it on the ground that he may be afterwards sued at law, and a judgment for damages recovered and enforced against him. If the judgment was obtained by collusion, and for the purpose of defrauding complainants, an injunction to restrain its execution is the proper remedy (High on Injunctions, § 118; *Green* v. *Haskell*, 5 R. I. 449; *Oakley* v. *Young*, 2 Halst. Ch. 453); and I am of the opinion that in such a case the bill need not aver the insolvency of the plaintiff on the fraudulent judgment. To allow the execution of such a judgment as against innocent third parties, remitting them to their action for damages afterwards, would not be to afford them a plain, speedy and adequate remedy. The jurisdiction in equity arises in all such cases upon a proper allegation of fraud. If it were necessary to aver and prove insolvency as well as fraud, the jurisdiction would be defeated in very many cases.

3. It is insisted that this court cannot maintain the injunction because it stays proceedings in a state court. Section 720 of the Revised Statutes of the United States provides that "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." The ready answer to this proposition is that the court is not asked to grant an injunction to stay proceedings upon the judgment in the state court, but only to continue in force an injunction allowed by the state court before the removal of the cause. Jurisdiction for this purpose is plainly given by the fourth section of the Act of Congress of March 3, 1875, which provides "that when any suit shall be removed from a state court to a circuit court of the United States, * * all injunctions, orders and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be so removed." If the removal act did not contain this provision, I think it would be implied from necessity. In all cases where a removal is authorized, the federal court must be empowered by necessary implication, if not by the express words of the statute, to take the case and carry it on to final judgment and execution. If this were not so, the effect of a removal might be to deprive a party of his remedy in the state court.

The motion to dissolve the injunction is overruled.

NOTE.—See *Diggs v. Walcott*, 4 Cranch, 179.

Circuit Court, U. S., W. D. Missouri, W. D., November, 1881.

SMITH *et al.*)
vs. } In Equity.
SCHWED *et al.*)

This is a bill in equity brought to set aside a judgment rendered in the Circuit Court of Jackson County, Missouri, on the 26th day of January, 1880, in favor of respondent, Heller and against respondents Schwed & Newhouse, for $9.512.50. The judgment was by confession and it appears upon its face to have been upon a promissory note given by said Schwed & Newhouse to said Heller. The bill charges that the judgment was confessed without consideration and by fraud and collusion for the purpose of hindering, delaying, and defrauding creditors. Schwed & Newhouse were for sometime prior to the rendition of said judgment engaged in business as wholesale jewelers in Pittsburgh, Pennsylvania, and at Kansas City, Missouri. Their store at Kansas City was established as a branch of their business in Pittsburgh. In the course of their business they borrowed money from time to time from the respondent, Heller, and made numerous payments on account of such loans; but whether, at the time the judgment was confessed, there was a balance due as claimed by respondents in the case, is one of the questions in dispute. On the same day in which the said judgment in the Circuit Court of Jackson County, Missouri, was confessed, another judgment, for $5,009.33 was confessed by Schwed & Newhouse in favor of Heller, on another note, in the Court of Common Pleas, of Allegheny County, Pennsylvania. It appears that the alleged balance due from Schwed & Newhouse to Heller was divided into two notes, one for $5,000 and the other for $9,000, dated respectively, December 22, 1879, and February 8, 1879, and each due one day after date; and on the former judgment was confessed in the Pennsylvania court, and upon the latter in the Missouri court. Executions were issued at once on both judgments, and the stores at Pittsburgh and Kansas City were simultaneously closed by the sheriffs.

Complainants, who are creditors of Schwed & Newhouse, instituted this suit in the state court to enjoin the execution of the judgment of the Circuit Court of Jackson County, Missouri, and to set the same aside as fraudulent. They also brought in the state court suit by attachment on their respective claims, and caused the Kansas City stock of jewelry to be attached. These attachment suits have been prosecuted to judgment in the state court. Since the institution of this suit the property attached (the stock of watches and jewelry) has been sold under an order of the state court by the sheriff of Jackson County, Missouri, one O. P. W. Bailey, who is made a party defendant herein, and the sum of $8,250 was realized therefor, which sum is now in the hands of said sheriff to abide the final result of this litigation. The complainants pray for decree to set aside said judgment as fraudulent and void, and also for distribution of the fund in the hands of the sheriff among the several judgment creditors of Schwed & Newhouse.

This case was removed from the state court on the ground of the citizenship of the parties. The further facts, so far as necessary to be considered, are stated in the opinion.

Botsford & Williams and Scarritt & Riggins, for complainants.

Bryant & Holmes and Tichenor & Warner, for respondents.

McCRARY, CIRCUIT JUDGE. I will consider the several questions of law and fact in this case in the order in which they have been argued by counsel.

1. It is insisted on the part of the defense that proof of fraud in the confession of the judgment in Pennsylvania, and in the sale of the Pittsburgh stock under execution thereon, is not admissible to show fraud in the judgment in Missouri.

The true rule upon this subject is this: It is not competent, for the purpose of showing fraud in a particular transaction, to show that the same party has been guilty of fraud in another separate and independent transaction, not in any way connected with the matter in controversy. Courts will not go into such extraneous matters. But if the transaction sought to be shown in evidence can be connected with the transaction in controversy, as evidence of a connected scheme of fraud, it is admissible.

Clark v. White, 12 Pet. 193.

Judged by this rule, I think the evidence tending to show fraud in the Pennsylvania transactions is admissible. The two transactions were manifestly but parts of one scheme; whether honest or fraudulent is to be considered presently. They were between the same parties. The balance claimed by Heller as due him from Schwed & Newhouse was divided into two notes, and the collection of the sums due on said notes, respectively, was the ostensible purpose of the confession of the two judgments. They were rendered on the same day, and unquestionably in pursuance of an understanding between the parties. The two notes were, in fact, parts of the same debt. The two stores were branches of the same business, and the two judgments were therefore so connected together as to be justly regarded, for the purposes of this question, as parts of one transaction, to-wit, a scheme by which it was intended to procure judgments and executions in favor of Heller, and secure the stock of Schwed & Newhouse, both in Kansas City and Pittsburgh.

There is also testimony tending to show that it was the purpose of the parties to prevent competition at both sales, so as to enable Heller to purchase the property for less than its value. Of this evidence I will speak in another connection; I mention it now only as bearing upon the question whether there was a connection between the transaction at Kansas City and Pittsburgh; and I say, without hesitation that it is the duty of the court, under the circumstances of the case, to consider the whole transaction embracing the proceedings at both places, in determining the question of fraud in the Missouri judgment.

2. Looking thus at the transactions, can it be said that fraud on the part of Heller is established by such a preponderance of proof as the law requires? This depends upon facts and circumstances shown in the evidence. The goods seized were worth largely more than the claim of Heller. The stock at Kansas City was worth at least $14,000, and that at Pittsburgh probably as much. This circumstance of itself would have but little weight, for a *bona fide* judgment creditor has a right to levy upon property of his debtor of a value greater than his judgment; but the value of the goods seized in this case is significant, in view of the further fact, which is clearly established, that there was a systematic effort, both at Kansas City and at Pittsburgh, to prevent the sale of the goods at their full value.

At Pittsburgh the stock was levied upon and advertised for sale as "two large safes and contents, a large lot of clocks, lot of watchmaker's

tools, one desk, four tables, three chairs, a lot of shelving," etc., certainly a very imperfect description of the valuable stock of watches and jewelry to be disposed of, and not well calculated to invite competition in bidding. At the sale only two bidders appeared, who were there, apparently in the interest of the defendants, and these were deterred from bidding by statements made to them by persons acting in the interest of Schwed, Newhouse and Heller, to the effect that the goods were to be purchased for a friend of theirs, and that it was desired that outsiders should not interfere. Heller, who was personally present at the sale, requested one Koemer, who was present, not to bid, and offered him his choice of several articles of jewelry to desist from doing so. The sale was made in a hurried manner—large lots of jewelry being sold in a lump—and the whole stock, excepting a very few articles, was bid in by Heller, who never took possession of it, but left it with Schwed and Newhouse, who at once resumed business, with no change in the style of the firm, except to have printed on their sign, in very small letters, the word "Agts." It is claimed by respondents that Heller gave the stock to his sister, who was the wife of Schwed, one of the firm of Schwed & Newhouse, and that it was as her agent that the firm continued the business.

If, however, it be true that Heller obtained the confession of judgment by an arrangement with Schwed & Newhouse, and with the intent to have the stock sold, bid it in, and gave it to the wife of Schwed, and if all parties combined to prevent competition at the sale, so as to accomplish this result, then the judgment and sale were fraudulent and void as to the creditors of Schwed & Newhouse.

I am inclined to the opinion that such a transaction is fraudulent in law, for the reason that it is not a *bona fide* effort to collect a debt, but a method of transferring property from a husband to his wife so as to place it beyond the reach of his creditors, which the law will not tolerate. In this case, I am quite clear that the transactions from their inception were fraudulent in fact. If it had been otherwise, there would have been no effort on the part of Heller, Schwed & Newhouse to prevent competition at the sale; on the contrary they would have been anxious to see the stock sold for the highest possible price. If it sold for more than Heller's judgment, Schwed & Newhouse would have received the excess. In that event Heller would have received the money due him, and could have given it to his sister if so disposed. Why, then, did they all exert themselves so zealously to prevent competition and have all the goods struck off to Heller at low prices? Evidently because it was their purpose to divest Schwed & Newhouse of their title, without in fact depriving them of the stock or breaking up their business. The judgment and sale were to be effectual as against creditors, but, for all other purposes, the business was to go on. It is impossible to believe that all this circumlocution was resorted to for the sole purpose of enabling Heller to make a present of the stock to his sister. If he believed Schwed & Newhouse were solvent, why did he not take the goods from them directly in payment for his debt? If they were willing to aid him to obtain the stock by confessing judgment and preventing competition at the sale, they would, of course, have been willing to turn out goods directly to him in payment. By this simple arrangement a large expenditure for costs would have been saved, and only creditors could have raised any valid objection to it. It is clear to my mind that Heller knew, or, at least suspected, that Schwed & Newhouse were indebted, and that he combined with

them under cover of a judgment, execution and sale, to transfer title to Mrs. Schwed before any of the creditors could be informed.

The resort to the expensive legal proceedings shown in the evidence when debtors and creditor were acting together in perfect harmony, can be accounted for only upon this theory. I am strengthened in this view by the fact that there was great haste and apparent secrecy in the proceedings. Why, for example, if there were no other known creditors, was it deemed necessary to have the two judgments confessed in different States on the same day, and to have executions immediately issued and levied on both stocks? Enough has been said to show the fraudulent character of the proceedings at Pittsburgh; but it is earnestly contended that there is no sufficient proof of fraud in the judgment in Missouri, which is the judgment attached and sought to be set aside in this case; if I am right in the conclusion stated, that the two transactions are so intimately connected as that they must stand or fall together, then the badges of fraud to which I have called attention are fatal to both judgments. But there is proof tending strongly to show that the scheme which was carried out at Pittsburgh, was attempted at Kansas City, and was unsuccessful only because the sale was enjoined. Here, as at Pittsburgh, the goods were kept in a safe. As soon as the execution was placed in the hands of the sheriff, Newhouse, who was in charge of the Kansas City stock, began to depreciate the value of the goods. He claimed that he could not open the safe, to enable the sheriff to examine and schedule the goods. He stated that the goods were of cheap quality and not valuable, and suggested to the sheriff to sell the whole stock in bulk. He several times suggested the same as to the sale of the safe, and contents; and the sheriff thinks he asked him if the safe and contents could not be sold without opening it. This was very strange conduct on the part of a debtor, whose goods were about to be sold on execution, and it can only be explained upon the theory that here, as in Pittsburgh, it was intended to sell the goods under the execution for the benefit and advantage of Schwed & Newhouse. If such was not the case, self interest would have dictated to Newhouse to magnify, rather than depreciate the value of the goods, and to use all means in his power to have them sold for the highest possible price.

Moreover, it appears from the testimony that the representations of Newhouse, as to the value and character of the goods, were untrue. After the safe was opened, and the goods came to be examined by an expert, it was found that instead of being of the cheapest kind, and such as peddlers usually sell through the country, as represented by Newhouse, one-third of the goods were solid gold, and nearly all the balance were plated, and that the actual value of the stock, in the opinion of the expert, instead of being very small, and not over $5,000, as represented by Newhouse, was from $15,000 to $16,000, wholesale, and $20,000 to $22,000, retail. It appears further, that after the levy Newhouse requested one Schribner, who had been acting as traveling agent for the Kansas City house, to remain in Kansas City, as the business would go on after the sale as before. This request must have been made with the expectation on the part of Newhouse that he, or the firm of Schwed & Newhouse, would be allowed to retain the stock after the sale in the same manner as in the case of the Pittsburgh stock. All these circumstances, and others which might be mentioned, lead inevitably to the conclusion that the judgment, execution, and levy in Kansas City were parts of a scheme by which, in connection with like proceedings in Pittsburgh, the two stores of Schwed & Newhouse were

to be sold for the purpose of hindering, delaying, and defrauding creditors, and placed in the name of the wife of Schwed. The proceedings in both courts would, in my judgment, be equally void if the purpose had been to sell the Kansas City stock to pay any sum due Heller, and at the same time to transfer, under the form of a judicial sale, the Pittsburgh stock to the wife of Schwed, to be held in her name for the benefit of Schwed & Newhouse. Such being the scheme, it would be impossible to hold it valid as to part and void as to the remainder. That Schwed & Newhouse acted with fraudulent intent is entirely clear. It would be difficult to imagine a more outrageous fraud upon creditors than appears to have been deliberately attempted by them. In the course of about six months they made purchases of merchandise on credit from 51 merchants, aggregating some $25,000, and then suddenly undertook, through confessions of judgments and sales, to transfer the very goods for which these debts were in large part contracted to a brother-in-law of one of them, with the understanding that he would allow them to retain the goods, and go on with the business under the guise of an agency.

There is no room for question here except as to whether Heller had notice of the fraudulent purpose of Schwed & Newhouse. I have already given some of my reasons for holding that he had notice. The transactions were extraordinary, unusual, and suspicious. The relations between the parties afford strong ground for the conclusion that Heller was fully advised as to the condition and purposes of the firm. Their conduct was such as to put him on inquiry and lead him to infer that they were trying to put their property beyond the reach of creditors; and, as already suggested, the conduct of Heller himself can be explained only upon the hypothesis that he knew the purpose of Schwed & Newhouse to be to defraud creditors, and intended to aid them in that purpose.

3. In view of what has been said, it is unnecessary to decide the question whether Schwed & Newhouse were *bona fide* indebted to Heller in the full amount of the judgments confessed. If it were necessary to decide this question I would examine the evidence very carefully, as I am not at present satisfied as to what the fact is. Being satisfied that the judgment was fraudulent, — in fact, given and taken with a deliberate purpose to defraud, — I hold that it must be set aside, independently of the question of the *bona fides* of Heller's claims. A creditor having a demand, however just, cannot use it as a means of defrauding other creditors of the same debtor. In a fair race for preference, if he, by diligence, secures an advantage, it may, perhaps, be maintained; but if his purpose is not to collect his debt, but to help the debtor cover up his property, he cannot shield himself by showing that his debt was *bona fide*.

4. It is alleged in the bill that the judgment in question is void because not entered in accordance with the statute of Missouri regulating the confession of judgments. It is said that the statement upon which the judgment was rendered was defective, in that it did not set forth the facts out of which the indebtedness evidenced by the notes arose; and, as authority for the proposition that this is a fatal defect, we are cited to the case of *Chappel* v. *Chappel*, 12, N. Y. 215.

On the other hand, it is insisted that the statement and affidavits upon which the judgment was confessed were in all respects such as the statute requires. I do not go into the question because I am clearly of the opinion that it is one over which this court has no jurisdiction. The federal courts will not entertain jurisdiction to set aside the judgment of a state court for

mere irregularity, or in a case where the proceeding is merely tantamount to the common law practice of moving to set aside a judgment for irregularity, or to a writ of error, a bill of review, or an appeal. The proceedings in all such cases are to be regarded as supplementary to and connected with the original suit, and must be instituted in the same court with the original proceeding. This court can only take jurisdiction where the bill is in its nature a separate, independent, and original suit. *Gaines* v. *Fuentes*, 92 U. S. 10; *Barrow* v. *Hunton*, 99 U. S. 80.

5 I come now to a question of considerable importance in its application to this and other cases. Can this court decree a distribution of the fund now in the hands of the sheriff of Jackson County, Missouri, as proceeds of the sale of the property attached in the several attachment suits instituted by the complainants herein, in the state court, against Schwed & Newhouse. It will be observed that these attachment proceedings were instituted and conducted to judgment in the state court, and that the sale under which the sheriff holds the money in question was made in the attachment suits by order of that court. It is only the bill in chancery instituted in the state court to enjoin the Heller judgment, and set it aside, that has been removed to this court. True, the bill contains a prayer for the payment of the complainant's judgments out of said fund, but the main purpose of the suit, and the feature of it which enables this court to take jurisdiction, was the prayer for a decree setting aside the judgment of Heller for fraud.

It is well settled that the removal of the cause to this court brought with it the subject-matter of the controversy, so as to enable the court, by final decree, to dispose of the same. What was the subject-matter of this suit, which, by the removal, was brought within our control? Clearly, it was the judgment and execution in the case of Heller against Schwed & Newhouse, and not the money in the hands of the sheriff, received by him in the course of proceedings in the attachment cases. These latter cases, not having been removed to this court, remain, with all their incidents, in the hands of the state court. We have no authority to make any decree disposing of property which is within the control of another court of co-ordinate jurisdiction. The state and federal courts of this country, sitting as they do in the same localities, and exercising a concurrent jurisdiction over many subjects, have great reason to observe with care the well-settled rule that the court which first gets possession of the subject-matter of a controversy must keep it until the controversy is decided, unless deprived of it by superior authority. In this case there will be a decree setting aside the judgment mentioned in the bill, but no order for the distribution of the fund in the hands of the sheriff.

Application for such an order must be made to the state court.

THE APPEAL BOND.

WM. SMITH, JOHN SMITH, O. C. LENZ, WM C. GREENE, B. W. GREENE, GEO. D. BRIGGS, SETH THOMAS CLOCK COMPANY, E. N. WELCH MANUFACTURING COMPANY, AND THOMAS QUAILE *Against* EDWARD SCHWED, SIMON H. NEWHOUSE, HERMAN HELLER, AND O. P. W. BAILEY.	In the Supreme Court of the United States.

Know all men by these presents that we, Herman Heller, as principal, and Bernard Abeles and Arnold Kohn as sureties, of the City of Philadelphia and State of Pennsylvania, are held and firmly bound unto William Smith, John Smith, O. C. Lenz, Wm. C. Greene, B. W. Greene, George D. Briggs, Seth Thomas Clock Company, E. N. Welch Manufacturing Company and Thomas Quaile, in the sum of Two Thousand Dollars, to be paid to the said William Smith, John Smith, O. C. Lenz, Wm. C. Greene, B. W. Greene, George D. Briggs, Seth Thomas Clock Company, E. N. Welch Manufacturing Company, and Thomas Quaile, their heirs, executors, administrators, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated this 19th day of November, A. D. 1881.

WHEREAS, Edward Schwed, Simon H. Newhouse, Herman Heller and O. P. W. Bailey have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled action by the circuit court of the United States for the Western Division of the Western District of Missouri.

Now, therefore, the condition of this obligation is such, that if the above named Edward Schwed, Simon H. Newhouse, Herman Heller and O. P. W. Bailey shall prosecute their said appeal to effect and answer all costs together for just damages for delay if they shall fail to make good this plea, then this obligation shall be void, otherwise to remain in full force and virtue.

H. HELLER. [Seal]
BERNARD ABELES. [Seal]
ARNOLD KOHN. [Seal]

Signed and sealed in presence of
SAMUEL BELL,
WM. A. WILLIAMSON.

I, Samuel Bell, Clerk of the Circuit Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the above named obligors, Bernard Abeles and Arnold Kohn are known to me to be perfectly good and responsible for the sum of ten thousand dollars.

Witness my hand and the seal of said court this 9th day of February, A. D. 1882.

(Signed.) SAMUEL BELL,
Clerk Cir. Ct. U. S. E. D. of Pa.

The foregoing bond is approved and will be filed and appeal allowed as of the 19th day of November, 1881.

(Signed.) GEO. W. McCRARY,
Circuit Judge.

February 15, 1882.

UNITED STATES OF AMERICA, }
E. DISTRICT OF PENNSYLVANIA. } ss.

Arnold Kohn, being duly sworn, deposes and says:

I reside at 1320, Market St., City of Philadelphia. Am engaged in the wholesale clothing business at 312 Market St., City of Philadelphia. I own the property, 1322 Marshal St., City of Philadelphia. The deed is in my name and so recorded. This property is assessed at forty-five hundred dollars; there is a ground rent upon it of twenty-two hundred dollars, which I expect to pay off next month. There are no judgments of any kind against me—I am worth at least thirty thousand dollars over and above all debts and liabilities. (Signed.) ARNOLD KOHN.

Sworn and subscribed to before me, this 21st day of November, A. D. 1881. SAMUEL BELL,
U. S. Com.

UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF PENNSYLVANIA. } ss.

Bernard Abeles being duly sworn deposes and says: I reside at No. 722 Franklin street, City of Philadelphia; I am not engaged in any business, having retired from business about three years ago; I own the house I live in; also a property No. 16 North 8th street, City of Philadelphia, which is assessed for taxable purposes at twenty thousand dollars ($20,000); this property is my own and the deed is recorded in my name; there is no mortgage or other incumbrance on this property, nor are there any judgments of any kind against me, and I owe no debts; I am worth more than fifty thousand dollars.

[Signed] BERNARD ABELES.

Sworn and subscribed to before me this 21st day of November, A. D. 1881.

(Signed) SAMUEL BELL, U. S. Commissioner.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri. } *Sct.*

I, Henry C. Geisberg, Clerk of the Circuit Court of the United States, in and for said Division and District, Do Hereby Certify, that the foregoing is a true and complete transcript of the record, proceedings, testimony and opinions of the court (except "Exhibit 14," "Exhibit 15" and "Exhibit 18" to deposition of Edward Schwed, taken at Pittsburgh, Pa., which are omitted by agreement, and the originals thereof transmitted to the Clerk of the Supreme Court in pursuance of the order of McCrary, Circuit Judge) in the case of William Smith et al. against Edward Schwed et al., as fully as the same remain on file and of record in my office.

Witness my hand as Clerk, and the seal of said court. Done
[L. S.] *at office in the City of Kansas, this third day of October, A. D. 1882.*

H. C. GEISBERG. Clerk.
By WARREN WATSON, Deputy Clerk.

OFFICE SUPREME COURT U.S.
FILED
OCT 28 1882
JAMES H. MCKENNEY, CLERK

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, A. D. 1882.

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners under the firm name of Schwed & Newhouse,
HERMAN HELLER, and
O. P. W. BAILEY, Sheriff of Jackson County, Missouri, *Appellants*,

AGAINST

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners under the firm name of William Smith & Company,
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, co-partners under the firm name of William C. Greene & Company,
E. N. WELCH MANUFACTURING COMPANY,
THE SETH THOMAS CLOCK COMPANY, and
T. QUAYLE, doing business under the name of T. Quayle & Company, *Respondents*.

IN CHANCERY.

No. 1067

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION OF RESPONDENTS TO DISMISS APPEAL,

AND

BRIEF AND ARGUMENT ON BEHALF OF RESPONDENTS, ON MOTION TO DISMISS APPEAL.

BOTSFORD & WILLIAMS, and
SCARRITT & RIGGINS,
Solicitors for Respondents.

JAMES S. BOTSFORD, of counsel.

H. N. FAREY & CO., PRS. JOURNAL BUILDING, KANSAS CITY.

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, A. D. 1882.

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners under the firm name of Schwed & Newhouse,
HERMAN HELLER, and
O. P. W. BAILEY, Sheriff of Jackson County, Missouri, *Appellants*,

AGAINST

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners under the firm name of William Smith & Company,
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, co-partners under the firm name of William C. Greene & Company,
E. N. WELCH MANUFACTURING COMPANY,
THE SETH THOMAS CLOCK COMPANY, and
T. QUAYLE, doing business under the name of T. Quayle & Company, *Respondents*.

IN CHANCERY.

No......

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

NOTICE TO APPELLANTS OF RESPONDENTS' MOTION TO DISMISS APPEAL.

To the above-named Appellants, and to Mayer Sulzberger and Bryant, Holmes & Waddill, of Counsel of Record for Appellants:

You will please take notice, that on the second Monday in November, A. D. 1882, the same being the 13th day of November, A. D. 1882, and at the October Term, A. D. 1882, of said

United States Supreme Court, the above-named respondents, by the undersigned, their counsel and solicitors of record, will submit their motion to dismiss the appeal of appellants in said cause to said Court from the final decree rendered therein in the United States Circuit Court for the Western Division of the Western District of Missouri, rendered and entered of record on the 5th day of November, A. D. 1881, in said Circuit Court.

A full and true copy of which said motion, and of the brief and argument of respondents' counsel in support thereof, is herewith attached and served with this notice.

BOTSFORD & WILLIAMS, and
SCARRITT & RIGGINS,
Solicitors for Respondents.

JAMES S. BOTSFORD, of counsel.

STATE OF MISSOURI, }
Jackson County. } ss.

We the undersigned, Mayer Sulzberger and Bryant, Holmes & Waddill, of counsel of record of the above-named appellants, hereby acknowledge service of the above and foregoing notice, by a true copy thereof and a true copy of said motion and of the brief and argument of the counsel and solicitors of the above-named respondents being delivered to us, at Kansas City, this 14th day of October, A. D. 1882.

MAYER SULZBERGER,
BRYANT, HOLMES & WADDILL,
Solicitors and Counsel of Record for Appellants.

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, A. D. 1882.

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners under the firm name of Schwed & Newhouse,
HERMAN HELLER, and
O. P. W. BAILEY, Sheriff of Jackson County, Missouri, *Appellants*,

AGAINST

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners under the firm name of William Smith & Company,
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, co-partners under the firm name of William C. Greene & Company,
E. N. WELCH MANUFACTURING COMPANY,
THE SETH THOMAS CLOCK COMPANY, and
T. QUAYLE, doing business under the name of T. Quayle & Company, *Respondents*.

IN CHANCERY.

No. _____

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION OF RESPONDENTS TO DISMISS APPEAL.

Now at this day come the above-named respondents, by their attorneys, and move the Court here for an order dismissing the appeal of said appellants from the decree rendered in said cause in the Circuit Court of the United States for the Western

Division of the Western District of Missouri, on the 5th day of November, A. D. 1881, upon the following statement of facts and grounds of said motion, to-wit:

STATEMENT OF FACTS.

Appellants Schwed and Newhouse, citizens of the States of Missouri and Pennsylvania, doing business as wholesale dealers in jewelry, etc., at Kansas City, Missouri, on the 26th day of January, A. D. 1880, confessed a judgment in the Circuit Court of Jackson county, in said State of Missouri, in favor of appellant Heller, a citizen of the State of Pennsylvania, in the sum of nine thousand five hundred and twelve and 50-100ths dollars and costs, upon which execution issued and was levied on same day by appellant Bailey, as sheriff of said Jackson county, upon the entire stock in trade of said Schwed & Newhouse at Kansas City, which was advertised for sale under said execution on the 14th day of February, 1880, by said sheriff. (See Transcript of Record, pp. 258, 259 and 263.)

Respondents Wm. Smith & Company and Wm. C. Greene & Company, creditors of Schwed & Newhouse, instituted separate suits by attachment against them, in said Jackson County Circuit Court, on the 12th day of February, A. D. 1880, wherein the amount sworn to in favor of Wm. Smith & Company was three thousand eight hundred and twenty-nine and 71-100ths dollars, and in favor of Wm. C. Greene & Company was one thousand and twelve and 93-100ths dollars. Writs of attachment issued separately in said actions, on same day, and were levied upon the same property which had been seized by said sheriff under the execution issued on said judgment by confession therein in favor of said Heller.

Respondents Wm. Smith & Company and Wm. C. Greene & Company, on the 14th day of February, 1880, as such attaching creditors, filed in said Jackson County Circuit Court their joint petition against Schwed & Newhouse, Heller and said sheriff as defendants, to set aside said judgment by confession and execution, as fraudulent and void, and to restrain the sale of said property thereunder, and to require said sheriff to hold the same sub-

ject to the rights of said plaintiffs, as attaching creditors, thereto. (Transcript of Record, pp. 3, 4, 5, 6, 7, 8 and 9.)

On this petition a restraining order was issued, and said property was subsequently, under the order of said Jackson County Circuit Court, sold in said attachment suits, and the proceeds thereof, amounting to eight thousand two hundred and fifty dollars, remained in the hands of said sheriff awaiting the event of this suit, which thereafter was duly removed into the said Circuit Court of the United States for the Western Division of the Western District of Missouri. (Transcript of Record, pp. 13, 14, 15, 16 and 17.)

Subsequent to the institution of said attachment suits, Wm. Smith & Company and Wm. C. Greene & Company obtained, at the April Term, A. D. 1881, of said Jackson County Circuit Court, judgments on their said demands against Schwed & Newhouse, and respondents E. N. Welch Manufacturing Company, The Seth Thomas Clock Company and T. Quayle & Company, attaching creditors of said Schwed & Newhouse, whose writs of attachment had been levied by said sheriff of Jackson county on the same property, at the same term of said Jackson County Circuit Court, obtained judgments against Schwed & Newhouse for the amount of their respective claims.

Said judgments were in amounts as follows:

Wm. Smith & Company for four thousand one hundred and seventy-four and 38-100ths dollars and costs.

Wm. C. Greene & Company for eleven hundred and four and 9-100ths dollars and costs.

E. N. Welch Manufacturing Company for four hundred and fifty-five and 58-100ths dollars and costs.

Seth Thomas Clock Company for nine hundred and seventy-seven and 27-100ths dollars, and costs; and for five hundred and forty-one and 22-100ths dollars and costs.

T. Quayle & Company for three hundred and fifty-six and 45-100ths dollars and costs.

(Transcript of Record, pp. 26, 28 and 29.)

Afterward, at the May Term, A. D. 1881, of said United States Circuit Court, all of said respondents, judgment creditors

of said Schwed & Newhouse, joined in a supplemental bill of complaint in this cause, setting forth their respective attachments and judgments as herein stated, and praying that said fraudulently-confessed judgment in favor of said Heller by said Schwed & Newhouse, and the execution and levy thereunder, be set aside and held void, and that the fund arising from the sale of the attached property be distributed by said court among said respondents according to their respective liens thereon. All of appellants were made parties defendant to said supplemental bill. (Transcript of Record, pp. 25, 26, 27, 28, 29 and 30.)

On the final hearing of said cause in said United States Circuit Court, on the 5th day of November, A. D. 1881, at the October term thereof, said judgment by confession of said Jackson County Circuit Court, by said Schwed & Newhouse, in favor of said Heller, in said sum of nine thousand five hundred and twelve and 50-100ths dollars, rendered on the 26th day of January, A. D. 1880, and the execution issued thereunder on same day, and delivered to said sheriff of Jackson county, and the levy thereof upon said stock of goods of said Schwed & Newhouse in Kansas City, and all proceedings thereunder were adjudged and decreed by said United States Circuit Court to be null and void as against respondents herein, and each of them, as being made to hinder, delay and defraud the creditors of said Schwed & Newhouse, and the same were by the decree of said Circuit Court set aside and for naught held, and the injunction against said appellants restraining them from further proceedings thereunder was made perpetual. (Transcript of Record, p. 42.)

Whereupon said Schwed & Newhouse, Heller and Bailey prayed an appeal to this Court from said decree of said United States Circuit Court, which was allowed, and is the appeal now pending herein. (Transcript of Record, p. 42.)

The fund arising from the sale of the attached property was subsequently, by agreement of parties, paid into the registry of the United States Circuit Court, and amounts to seven thousand four hundred and five and 55-100ths dollars ($7,405.55), after deducting all costs of sale therefrom. (Transcript of Record, pp. 274, 275 and 276.)

GROUNDS OF MOTION.

Respondents, the attachment and judgment creditors of Schwed & Newhouse, joining in said suit, and in whose favor said decree was rendered, have separate and distinct interests, based on their separate and distinct attachments and judgments, none of which judgments exceed the sum of five thousand dollars, exclusive of costs. This Court, therefore, has no jurisdiction to entertain said appeal from said decree of said United States Circuit Court, because the amount in dispute between appellants and respondents herein does not exceed, exclusive of costs, the sum of five thousand dollars.

BOTSFORD & WILLIAMS,
SCARRITT & RIGGINS,
Solicitors for Respondents.

JAMES. S. BOTSFORD, of Counsel.

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, A. D. 1882.

EDWARD SCHWED and SIMON H. NEWHOUSE, co-partners under the firm name of Schwed & Newhouse,
HERMAN HELLER, and
O. P. W. BAILEY, Sheriff of Jackson County, Missouri, *Appellants*,

AGAINST

WILLIAM SMITH, JOHN SMITH and O. C. LENZ, co-partners under the firm name of William Smith & Company,
WILLIAM C. GREENE, B. W. GREENE and GEORGE D. BRIGGS, co-partners under the firm name of William C. Greene & Company,
E. N. WELCH MANUFACTURING COMPANY,
THE SETH THOMAS CLOCK COMPANY, and
T. QUAYLE, doing business under the name of T. Quayle & Company, *Respondents*.

IN CHANCERY.

No.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT ON BEHALF OF RESPONDENTS, ON MOTION TO DISMISS APPEAL.

STATEMENT.

The facts upon which the appeal in this case is sought to be dismissed are fully stated in the motion for that purpose filed by respondents herein.

Respondents, William Smith & Company and William C. Greene & Company, separate attaching creditors of appellants Schwed & Newhouse, whose claims as sworn to separately and in the aggregate were less than five thousand dollars, commenced this suit in the Circuit Court of the County of Jackson, State of Missouri, in which said attaching suits were pending, to set aside a fraudulent judgment which had been confessed in that court in favor of appellant Heller, by Schwed & Newhouse, for the sum of nine thousand five hundred and twelve 50-100 dollars and costs, and the execution thereunder, which had been levied by appellant, the then sheriff of Jackson county, Missouri, upon the personal property of Schwed & Newhouse, at Kansas City, upon which the writs of attachment in the actions of William Smith & Co., and William C. Greene & Co. were levied. (See Transcript of Record, pp. 2, 3, 4, 5, 6, 7, 8 and 9.)

After the cause had been removed to the United States Circuit Court for the Western District of Missouri, Western Division, the other respondents, attaching creditors of said Schwed & Newhouse, whose claims were each less than the sum of five thousand dollars, and whose writs of attachment in said Jackson County Circuit Court were levied on the same property of Schwed & Newhouse, after judgments in their respective attachment suits, in said Jackson County Circuit Court, joined in the present suit, by petition and on leave of said United States Circuit Court, with William Smith & Co. and William C. Greene & Co., as complainants in a supplemental bill to set aside said fraudulent judgment and execution. On the final hearing whereof the decree appealed from was rendered. (See Transcript of Record, pp. 25, 26, 27, 28, 29 and 30.)

The property levied upon by appellant Bailey was sold under the order of the State Circuit Court, in the attachment suit of William Smith & Co., and the proceeds of said sale remain in his hands.

All of the attachment creditors obtained judgments in their respective attachment suits, against Schwed & Newhouse, at the April Term thereof, A. D. 1881, in the several amounts as stated in the supplemental bill, as follows:

Wm. Smith & Co.,	$4,174.38
Wm. C. Greene & Co	1,104.09
Seth Thomas Clock Co	977.27
" " " "	541.22
E. N. Welch Manufacturing Co	455.58
T. Quayle & Co	356.45

(See Transcript of Record, pp. 26, 29 and 40.)

These judgments all bear interest at the rate of six per cent. from the date of rendition thereof.

The value of the property effected by the decree exceeds the sum of five thousand dollars. The amount of the claim of Heller, under his judgment by confession, exceeds five thousand dollars, exclusive of costs, and the amounts of the various judgments in favor of respondents exceed in the aggregate the sum of five thousand dollars, exclusive of costs.

The separate judgments and claims of respondents are each less than the sum of five thousand dollars. The decree appealed from, sets aside, cancels and annuls the judgment by confession in favor of Heller, and the execution thereunder, and the levy thereof on the property of Schwed & Newhouse, upon which the various writs of attachment of respondents were levied, as fraudulent and void as against respondents and each of them. (See Transcript of Record, p. 42.)

POINTS OF LAW.

Respondents, the attaching and judgment creditors of Schwed & Newhouse, joining in the bill of complaint herein, and in whose favor the decree appealed from was rendered, have separate and distinct interests, based on their separate and independent attachments and judgments, none of which exceed the sum of five thousand dollars, exclusive of costs. This court, therefore, has no jurisdiction to entertain said appeal from said decree of said United States Circuit Court, because the amount

in dispute between appellants and respondents herein does not exceed, exclusive of costs, the sum of five thousand dollars.

Seavers v. Bigelow, 5 Wallace, 208.
Oliver v. Alexander, 6 Peters, 143.
Rich v. Lambert, 12 Howard, 347.
Revised Statutes of Missouri, § 448 p. 71.
Martin v. Michael, 23 Mo., 50.
Drake on Attachment, §§ 260, 225, 224, 263, and cases cited.
United States v. Wilkinson, 5 Dillon, C. C., 275–277.
Field v. Milburn, 9 Mo. Rep., 492.
Lackey v. Seibert, 23 Mo., 85.
Ensworth v. King, 50 Mo., 477.
Story Eq. Pl., §§ 99–103 (a), 286 and 537.
2 Kent Com., 583 (443), and notes.
Marsh v. Burroughs, 1 Wood, C. C., 463.
Brinkerhoff v. Brown, 6 Johns, Ch. 199.
George v. Williamson, 26 Mo., 100.
Jackman v. Robinson, 64 Mo., 289.
Van Norden v. Morton, 99 U. S. (9 Otto), 378.
Railroad Company, v. Whitton, 13 Wallace, 270.
Payne v. Hook, 7 Wall. 425.
Thompson v. Railroad Companies, 6 Wallace, 134.
Shields v. Thomas, 17 Howard, 3.
The "CONNEMARA," 103 U. S. (13 Otto), 754.
The "RIO GRANDE," 19 Wallace, 178.
Rodd v. Heartt, 17 Wallace, 354.

BRIEF AND ARGUMENT.

I.

This action was originally instituted by respondents Wm. Smith & Co., and Wm. C. Greene & Co., separate attaching creditors of appellants Schwed & Newhouse, under the provisions of section 448 of the Revised Statutes of Missouri, which is as follows:

"§ 448. Any attaching creditor may maintain an action for the purpose of setting aside any fraudulent conveyance, assignment, charge, lien or encumbrance of or upon any property attached, in any action instituted by him; and where several attachments in favor of different plaintiffs are levied on the same property, all or any number of such plaintiffs may join in the same action for that purpose."

1st vol. R. S. Mo., 1879, p. 71.
R. S. Mo., 1865, § 51, p. 568.
Sess. Acts Mo., 1860, § 2, p. 3.

Prior to the enactment of this section, the Supreme Court of Missouri, in the year 1856, held that a creditor at large, who had commenced suit by attachment for his debt but had not obtained judgment therefor, was not entitled to invoke the equitable interference of the courts to annul a judgment by confession by his debtor, in favor of another, or to restrain by injunction the disposal of the debtor's property through the means of an execution issued on such confessed judgment.

Martin et al. v. Michael et al., 23 Mo. Rep., 50.

And in the absence of statutory regulation this seems to be the doctrine of the American courts in those states where the attachment holds the property, not for the benefit of all the creditors, but, as in Missouri, where the writs hold the property for the benefit of the creditors attaching, in the order of their service.

Drake on Attachment, §§ 260 and 225, and cases cited.

The effect of an attachment in Missouri is to secure the attaching creditor a conditional lien which may be perfected by a judgment, and affects the property attached only, and does not affect the interest of any other than the attaching creditor in any way. The attaching creditor, under the laws of Missouri, is the only party interested, both as a creditor and as regards the property attached.

United States v. Wilkinson, 5 Dillon, C. C., pp. 275–277.

The levy of the writs of attachment of respondents on the goods of Schwed & Newhouse created a distinct lien in favor of each attaching creditor from the date of the levy.

Field v. Milburn, 9 Mo. Rep., 492.
Lackey v. Seibert, 23 Mo. Rep., 85.
Ensworth v. King, 50 Mo. Rep., 477.
Drake on Attachment, §§ 224 and 263, and cases cited.

The present suit is not "a creditor's bill" in the sense in which those words are used in the practice of courts of chancery, by which one or more creditors may sue in behalf of all for the administration of assets of a deceased debtor, or the enforcement of a trust deed, *inter vivos*, and any decree obtained is for the benefit of all.

Story Eq. Pl., §§ 99–103, (a).

But it is a bill under the section of the Revised Statutes of the state, above cited, the purpose of which is to set aside the fraudulently-confessed judgment and the lien of the execution issued thereunder and levied upon the property attached, and to subject the same to the payment and satisfaction of the distinct and separate claims of the attaching creditors, who bring the bill, according to their respective priorities secured by the levy of their respective writs of attachment.

It is analagous to an ordinary suit by judgment creditors to set aside a fraudulent conveyance by the common debtor, in which the creditors may join, or any one of them may alone bring the bill, and the creditor who first files his bill obtains a priority, and is entitled to be first paid from the proceeds of the sale, if a sale be decreed.

2 Kent Com. 583 (443) and notes.
Marsh v. Burroughs, 1 Wood, C. C., 463.
Brinkerhoff v. Brown, 6 Johns, Ch. 139.
George v. Williamson, 26 Mo., 190.
Jackman v. Robinson, 64 Mo., 289.

The joinder of such judgment creditors is allowed and justified on the ground that, although they have separate and distinct judgments, they all have a common interest in the suit, and if they succeed, the decree will be equally beneficial to all in proportion to their respective interests.

Story Eq. Pl., §§ 286, 537, and cases cited.

The case, then, is one where attaching and judgment creditors, having distinct and separate liens, arising from separate and independent attachments and judgments, upon a common fund, have joined in a bill to remove a charge upon it which prevents them from receiving satisfaction of their demands according to their respective priorities, and it comes fairly within the principle announced by this Court in *Seavers v. Bigelow*, 5 Wallace, 208.

In no event could the sum in dispute of either party exceed the amount of their judgment, which is less than five thousand dollars. If the bill had been dismissed, each would fail in obtaining the payment of his demand. Being sustained, and a decree rendered in their favor setting aside the fraudulently-confessed judgment and the execution thereunder, it can only operate in their favor for the amount of the judgment of each.

It is true the litigation involves a common fund, which exceeds the sum of five thousand dollars, but neither of the attachment and judgment creditors has any interest in it exceeding the amount of his judgment, which in no one case equals the sum of five thousand dollars. The matter in controversy between the respective parties is the amount claimed under their respective attachments. The dispute is whether the property in question is liable to be charged with these respective claims, and each attaching and judgment creditor has an interest in the fund, and in the controversy respecting it, only to the extent and to the amount of his separate judgment, and the jurisdiction of this Court depends upon that amount.

II.

The fact that the statute of the state authorizes these creditors to join in the action to set aside the fraudulent conveyance effecting the property attached does not render their interests joint. They could have maintained separate suits, as they were required to institute separate actions by attachment in the State Circuit Court, and the joinder in one action is authorized by the statute for convenience, to save costs, to avoid a multiplicity of suits, and in recognition of the chancery practice to which we have adverted.

The statute cannot, any more than the indulgence of courts of equity in permitting the joinder of parties having separate interests independent of each other in similar cases, confer jurisdiction on this court to take cognizance of cases, by appeal, not authorized by the constitution and laws of the United States.

Seavers v. Bigelow, 5 Wallace, 208.
Oliver v. Alexander, 6 Peters, 143.
Rich v. Lambert, 12 Howard, 347.

The statute of Missouri conferring the right to respondents, or any one of them, as attaching creditors of Schwed & Newhouse, before judgment, to bring their bill to set aside the fraudulent judgment by confession in favor of Heller and the levy of the execution thereunder on the property attached, which right did not before exist in their favor, the courts of the United States will enforce the right and give effect to the remedy, according to the received principle in equity and the practice of such courts of the United States in equity, if their bill states a case for equitable relief.

Van Norden v. Morton, 99 U. S. (9 Otto), 378.
Railroad Company v. Whitton, 13 Wallace, 270.
Payne v. Hook, 7 Wallace, 425.
Thompson v. Railroad Companies, 6 Wallace, 134.

III.

The fact that the decree of the United States Circuit Court appealed from does not order the distribution of the fund in the hands of the sheriff arising from the sale of the attached property among the respective judgment creditors joining in the bill according to their respective liens and priorities as stated in the supplemental bill of complaint, does not render their interest in the fund or in the decree joint and undivisible, but such interests remain distinct and several to the extent of their separate judgments, the same as though such distribution had been in fact ordered by the court in the decree.

The decree is, in effect as in terms, a cancellation and annullment of the judgment by confession in favor of Heller, as to each judgment creditor, to the extent of his respective claim, which was and is fixed and determined by the levy of his writ of attachment on the property and by the judgments rendered in each attachment suit in favor of such creditors in the State Circuit Court in their several law actions.

In other words, the effect of the decree of the United States Circuit Court in this suit, setting aside the judgment by confession in favor of Heller and the issue and levy of the execution thereunder on the property of Schwed & Newhouse, was and is to leave the rights and interests of the parties claiming the fund under their attachments as they existed and were secured by the levy of the several writs of attachment thereon in their favor, the same as though such fraudulent judgment had never been confessed and no execution had ever issued. And these rights and interests were and are independent claims in favor of several and distinct creditors, on separate demands, and the respective liens of which on the common fund arising from the sale of the attached property are to be determined by the date and effect of the levy of their various attachments on the property of their common debtors, Schwed & Newhouse.

IV.

This case, therefore, stands on different principles from that of *Shields v. Thomas*, 17 Howard, 3, and the "CONNEMARA," 103 U. S., (13 Otto), 754, and cases of that character, in this court.

In *Shields v. Thomas, supra*, "the matter in controversy was the sum due the representatives of the deceased collectively, and not the particular sum to which each was entitled when the amount due was distributed among them according to the laws of the state [of Kentucky]. *They all claimed under the same title. They had a common and undivided interest in the claim*, and it was perfectly immaterial to the appellant how it was shared among them."

In the "CONNEMARA" the claim was for a single service of salvage rendered jointly, by the salvors, to the owner of the property saved. Separate and distinct interests were not united in that suit, and the matter in controversy was the amount due collectively, and not the particular sum to which each salvor was entitled when the amount was distributed among them.

In the "RIO GRANDE," 19 Wallace, 178, the motion to dismiss was denied because the claims of two of the libellants, *with interest to the date of the decree, each* exceeded the sum of two thousand dollars.

In *Rodd v. Heartt*, 17 Wallace, 354, the claim of appellant Rodd and of his co-mortgagees, jointly secured by the same mortgage, exceeded the sum of two thousand dollars, and the motion to dismiss was therefore denied.

On the facts stated in the motion, and the grounds thereof, and under the settled authority of this Court, we respectfully submit that the motion to dismiss the appeal must be sustained and the appeal dismissed.

BOTSFORD & WILLIAMS,
SCARRITT & RIGGINS,
Solicitors for Respondents.

JAMES S. BOTSFORD, of Counsel.

OFFICE SUPREME COURT
FILED
NOV 2 1882

No. 1067. *October Term, 1882.*

In the Supreme Court of the United States.

SCHWED *et al.*

vs.

SMITH *et al.*

Appeal from the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Appellant's Argument on motion to dismiss Appeal.

MAYER SULZBERGER,
BRYANT, HOLMES & WADDILL,
For Appellants.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

In the Supreme Court of the United States.

Schwed et al.
vs.
Smith et al.

October Term, 1882,
No. 1067.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

APPELLANTS' ARGUMENT ON MOTION TO DISMISS APPEAL.

The Circuit Court decreed Heller's judgment against Schwed & Newhouse to be fraudulent and void.

Heller's judgment is for	$9,512 50
Appellees' judgments aggregate .	7,608 99
The fund in the State court is . .	7,405 55

It did not decree that the appellees, or any of them, were entitled to receive any amount whatever.

It gave judgment in effect that Heller's lien for $9512.50 should be vacated and annulled.

This is the decree appealed from.

The appellees, by confounding their various proceedings, conclude that the appeal is from several judgments or decrees each less than $5000 in amount.

A statement of the appellees' proceedings will show their error.

They instituted

First.—A series of attachment suits against the defendants in the execution. With these Heller has no concern. They were and remain in the State court.

Second.—A bill in equity really against Heller, the plaintiff in the execution (though the defendants in the execution and the Sheriff are joined). This is the case removed to the Circuit Court, and subsequently by appeal to this court.

It is obvious that by the first series or the attachment suits, the appellees seized property which, if sufficient, would be used to satisfy their judgments.

The existence of Heller's prior lien, however, made it doubtful whether they would get anything. They, therefore, instituted the equity suit to remove this lien and to give themselves priority.

So stated, it is seen that the amounts of the appellees' judgments were never in controversy, and that, at all events, Heller never controverted anything in proceedings to which he was not even a party.

This suit to set aside the judgment and execution was decided in their favor by the court below; hence the appeal to this court.

What was the issue or question in dispute in the case so removed?

The answer is found in the pleadings, in the opinion of the court, and in the decree of the court.

1. As to the Pleadings.

The bill avers (Transcript, page 28), that the judgment obtained by Heller against Schwed & Newhouse was in fraud of creditors.

The answer (Transcript, page 33) denies this, and sets up that the judgment was confessed in good faith for a just debt.

2. The Opinion of the Court. (Transcript, page 284.)

"* * * 5. I come now to a question of considerable importance in its application to this and other cases. Can this court decree a distribution of the fund now in the hands of the sheriff of Jackson county, Missouri, as proceeds of the sale of the property attached in the several attachment suits instituted by the complainants herein, in the State court against Schwed & Newhouse? It will be observed that these attachment proceedings were instituted and conducted to judgment in the State court, and that the sale under which the sheriff holds the money in question was made in the attachment suits by order of that court. It is only the bill in chancery instituted in the State court to enjoin the Heller judgment, and set it aside, that has been removed to this court. True, the bill contains a prayer for the payment of the complainant's judgments out of said fund, but the main purpose of the suit, and the feature of it which enables this court to take jurisdiction, was the prayer for a decree setting aside the judgment of Heller for fraud.

"It is well settled that the removal of the cause to this court brought with it the subject-matter of the controversy, so as to enable the court, by final decree, to dispose of the same. *What was the subject-matter of this suit, which, by the removal, was brought within our control? Clearly, it was the judgment and execution in the case of*

Heller against Schwed & Newhouse, and not the money in the hands of the sheriff, received by him in the course of proceedings in the attachment cases. These latter cases, not having been removed to this court, remain with all their incidents in the hands of the State court.

"* * * *In this case there will be a decree setting aside the judgment mentioned in the bill*, but no order for the distribution of the fund in the hands of the sheriff.

"Application for such an order must be made to the State court."

3. THE DECREE. (Transcript, page 42.)

The decree in accordance with the opinion cited, adjudges that the judgment in the bill mentioned was confessed in fraud of creditors, "and that said judgment, execution, levy, and proceedings, and the lien of said execution and levy on said stock of goods as to said plaintiffs and each of them, be and the same are hereby canceled, annulled, set aside, and decreed to be absolutely null and void."

From all this it seems too clear for argument that the question in controversy was the right of Heller to the fund. The appellees' right to recover was never questioned by any one, and, indeed, never arose in the Circuit Court, and the effect of the appellees' maintaining their bill will be to deprive Heller of the whole fund.

Which of these attaching creditors gets it, or in what proportions, are questions of no moment to him. He will lose the whole amount, and this is the controversy on his part.

That this is the natural and common-sense view of the case, appears from the declaration of the appellees themselves on the record.

In their petition for the removal of the cause from the State court (Transcript, page 16), they say (and the averment is attested by the oath of one of their solicitors):

"* * * That this is a suit of a civil nature in equity, *in which the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and involves the sum of over five thousand dollars* * * *."

This statement was made on September 15th, 1880, when William Smith & Co. and William C. Greene & Co. were the only plaintiffs, whose aggregate claims had been sworn under $5000.

The cases of Shields *vs.* Thomas, 17 How., 3, and The Connemara, 13 Otto, 754, are decisive against the motion to dismiss.

The true test whereby the court is to ascertain what is in dispute, is to judge by the direct effect of the judgment or decree on the party appellant.

"So far as the appellant is concerned," said Mr. Chief Justice Taney in the former case, "the entire sum found due by the Kentucky court is in dispute. *He disputes the validity of the decree*, and denies his obligation to pay any part of the money. And if the appellees maintain their bill, he will be made liable to pay the whole amount decreed to them. This is the controversy *on his part*, and the amount exceeds $2000."

MAYER SULZBERGER,
BRYANT, HOLMES & WADDILL,
for Appellants.